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UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Shepard
Wiley, Judge, Dept. "50"]

NOTICE OF MOTION AND MOTION:

1. FOR DISCOVERY OF PEACE
OFFICER PERSONNEL AND OTHER
RECORDS REGARDING WILLIAM
TAYLOR; AND

2. TO COMPEL FURTHER
RESPONSES TO INTERROGATORIES
AND REQUEST FOR PRODUCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CHRISTOPHER BRIZZOLARA

Date: April 22, 2010

Time: 8:30 a.m.

Dept.: 50

Action Filed: 9/22/09

FSC: November 5, 2010

Trial: November 16, 2010

3-5-10

1 **TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE**
2
3 **CITY OF BURBANK AND THE CITY OF BURBANK POLICE DEPARTMENT:**

4 **PLEASE TAKE NOTICE** that on , 2010 at 8:30 a.m. in the Los Angeles County Superior
5 Court, 111 N. Hill Street, Department 50, Los Angeles, California 90012, plaintiff William Taylor
6 (hereafter "plaintiff") will move for an order that defendant City of Burbank and the Burbank Police
7 Department produce certain records regarding plaintiff, Burbank Police Department Captain
8 William Taylor, and the City of Burbank, pursuant to *Evidence Code* §§ 1043 and 1045, and to
9 compel further responses to plaintiff's Form and Special interrogatories and Request for
10 Production pursuant to *C.C.P.* Sections 2030, et seq. and 2031, et seq. as set forth in the
11 Separate Statements of Interrogatories and Categories of the Request for Production of
12 Documents filed and served concurrently with this motion.
13

14 Plaintiff requests the following:

- 15 a. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
16 the Burbank Police Department into allegations that plaintiff William Taylor engaged in any
17 improprieties at any time;
18
19 a. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
20 the Burbank Police Department into allegations that plaintiff William Taylor improperly interfered
21 in and attempted to influence an internal affairs investigation;
22 b. All documents evidencing or pertaining to Burbank Police Department internal affairs
23 investigation 04-16-09-1;
24 c. All documents evidencing or pertaining to Burbank Police Department internal affairs
25 investigation 04-26-08-1;
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- 1 d. All statements, including all audio tapes and transcriptions thereof, taken during any
2 internal affairs or other investigation regarding allegations that plaintiff William Taylor improperly
3 interfered in and attempted to influence an internal affairs investigation;
- 4 e. Any personnel or other complaints by any person against William Taylor;
- 5 f. All documents evidencing or pertaining to any investigation, and the findings, evidence
6 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
7 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
8 agents or employees regarding any of the above matters, including the entire internal affairs files;
- 9 g. All statements taken by of witnesses pertaining to allegations that plaintiff William Taylor
10 improperly interfered in and attempted to influence an internal affairs investigation;
- 11 h. All documents pertaining to any allegations that plaintiff William Taylor improperly
12 interfered in and attempted to influence an internal affairs investigation;
- 13 i. All documents generated by the Burbank Police Department pertaining to any allegations
14 that plaintiff William Taylor improperly interfered in and attempted to influence an internal affairs
15 investigation;
- 16 j. All documents evidencing or pertaining to any discipline, including but not limited to oral
17 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
18 Burbank, the Burbank Police Department, and/or their agents or employees against William Taylor
19 regarding any of the above described matters; and
- 20 k. All documents evidencing or pertaining to any complaints, any investigations of any such
21 complaints, and the disposition of any such complaints, made by any person against William
22 Taylor for conduct engaged in by William Taylor while he has been a member of the Burbank
23 Police Department, including internal complaints, personnel complaints, governmental claims,
24 or civil lawsuits;
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1 l. The identification of all facts and witnesses through verified interrogatory responses that
2 allegedly support any allegations that plaintiff William Taylor improperly interfered in and
3 attempted to influence an internal affairs investigation;

4 m. The identification and production of all documents through further verified discovery
5 responses that allegedly support any allegations that plaintiff William Taylor improperly interfered
6 in and attempted to influence an internal affairs investigation.

7 n. Further verified responses by defendant, without objection, to the interrogatories and
8 requests for production of documents set forth in the Separate Statements of Interrogatories and
9 Categories and Responses Thereto filed and served concurrently herewith.

10
11 The proceedings at which disclosure are sought include the depositions and/or other
12 discovery proceedings, mediation, trial, appeal, and other proceedings in this action. Plaintiff is
13 informed and believes that the City of Burbank and/or the Burbank Police Department are in
14 possession of the requested Pitchess and other documents, and routinely create and maintain
15 such documents in the course of business. The further verified responses and documents are
16 requested to be produced within fifteen (15) days of the date of the hearing of this matter.

17
18 Dated: 3/10/10

19
20 By: 

Gregory W. Smith
Christopher Brizzolara
Attorneys for Plaintiff
WILLIAM TAYLOR

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police and currently a Captain employed by the BPD. Plaintiff has been employed as a sworn peace officer with the BPD for over twenty years and progressed steadily through the ranks of the BPD to the rank of Deputy Chief of Police, the second highest rank in the BPD.

On or about November 19, 2007, plaintiff prepared a memorandum which was submitted to then BPD Chief of Police Tim Stehr ("Stehr") requesting that an outside agency be appointed to investigate the burglary of internal affairs files and investigative materials which had been located in the office of BPD Lieutenant Rodriguez. In response, Chief Stehr angrily ordered plaintiff to destroy the memorandum he had prepared, and to delete the conclusion from the investigation conducted by Lieutenant Rodriguez.

On or about March 13, 2009, plaintiff complained to Chief Stehr that a BPD lieutenant was sexually harassing females at the Burbank Animal Shelter. Plaintiff recommended that the lieutenant be placed on leave pending an investigation of the lieutenant's misconduct. Chief Stehr refused to place the lieutenant on leave, and became angry at plaintiff for making the recommendation.

On or about March 19 and March 24, 2009, plaintiff informed Burbank City Manager Michael Flad ("Flad"), the highest ranking administrative official in the City of Burbank, about the magnitude of the sexual harassment conducted by the lieutenant at the Burbank Animal Shelter. In or around April and May 2009, on two separate occasions, plaintiff informed Flad that the lieutenant who had been accused of sexually harassing females at the shelter had inside

1 information regarding Chief Stehr, and as a result thereof Chief Stehr had refused to place the
2 lieutenant on administrative leave. Plaintiff also informed Flad that he believed that the lieutenant
3 had in fact sexually harassed females at the Burbank Animal Shelter.

4 On or about April 22, 2009, plaintiff informed Flad that documents concerning an excessive
5 force investigation against the BPD were burglarized from Lieutenant Rodriguez' office, and that
6 Chief Stehr was attempting to cover up the burglary. On or about April 30, 2009, plaintiff
7 reiterated many of same concerns to Flad.
8

9 From in or around April 2008 through May 4, 2009, plaintiff, then the Deputy Chief of Police
10 of the Burbank Police Department, complained on at least eight different occasions to Chief Stehr
11 that minority officers in the BPD were being subjected to discrimination, and were being unjustly
12 targeted for termination. On or about April 15, 2009, and again on or about April 18, 2009, plaintiff
13 reported to Burbank City Councilwoman Marsha Ramos, that he believed that minority officers in
14 the BPD were being subjected to discrimination by the BPD by targeting them for unjust
15 termination. On or about April 22, 2009, and again on or about April 30, 2009, plaintiff reported
16 to Burbank City Manager Flad that he believed there minority officers in the BPD were being
17 subjected to discrimination by the BPD.
18

19 Thereafter, on or about May 4, 2009, in retaliation for his whistleblowing activities protected
20 pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting
21 discrimination in violation of FEHA against other BPD employees, plaintiff was demoted from the
22 rank of Deputy Chief of Police to the rank of Captain. Further, on or about January 21, 2010,
23 plaintiff was placed on involuntary leave by the BPD for specious and unfounded allegations of
24 misconduct.
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1 On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or
2 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*
3 Section 1102.5 with the defendant.

4 On or about September 17, 2009, defendant sent plaintiff, via his counsel, a letter and a
5 memorandum purporting to set forth the alleged internal affairs charges against plaintiff. (Ex. "A")
6 On or about September 30, 2009, plaintiff was interrogated by defendant regarding these alleged
7 charges.
8

9 On or about November 11, 2009, plaintiff served Request for Admissions, Form
10 Interrogatories Employment Law, Special Interrogatories, and Request for Production of
11 Documents upon the defendant. (Exs. "B" - "D") On or about January 21, 2010, defendant served
12 verified responses to this discovery. (Exs. "E" - "G") In particular, in response to plaintiff's
13 Special Interrogatory No. 1 requesting defendant to specify each reason why plaintiff was
14 demoted from the rank of Deputy Chief to the rank of Captain, defendant responded in pertinent
15 part as follows:
16

17 "In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. he
18 did not believe that there was a pressing need for the role of the Captain serving in the
19 capacity of Deputy Chief, and he wanted to have more direct control and contact within the
20 Department. Therefore, he eliminated the assignment of having a Captain serve in the
21 capacity of Deputy Police Chief and reassigned plaintiff as the Captain in command of the
22 Investigations Division.

23 **Part of Chief's Stehr's decision to restructure was based upon a loss of**
24 **confidence in plaintiff's ability to fulfill the tasks given to the Captain with the Deputy**
25 **Chief's assignment. The most serious contributing factor was that Chief Stehr had**
26 **received allegations of impropriety concerning plaintiff, including that plaintiff had**
27 **improperly interfered in and attempted to influence an internal affairs investigation.**
28 **As the Captain with the Deputy Chief's assignment, plaintiff oversaw internal affairs**
investigations conducted by the Department, which oversight was not appropriate
given the allegations against plaintiff." (Emphasis added, Ex. "E", response to Special
Interrogatory 1.)

1 This contention regarding the alleged reason for defendant's demotion of plaintiff from the
2 rank of Deputy Chief to the rank of Captain is repeated throughout defendant's written responses
3 to discovery. (See, e.g., Ex. "F", responses to form interrogatories 201.3, 201.4, 216.1, and
4 217.1.) However, when requested to set forth the facts, witnesses, and documents which
5 allegedly support this contention, defendant has failed to set forth a single fact, witness, or
6 document which supports the contention. Instead, defendant has repeatedly objected to providing
7 such information, stating as follows:
8

9 "Witness information gathered or generated during the investigation into alleged
10 improprieties by plaintiff, which is ongoing and as such remains confidential and privileged,
11 will be provided if and when they are discoverable." (Ex. "E", response to Special
12 Interrogatory 2; Ex. "F", response to form interrogatory 201.3c, 201.4(d), 216.1(b), 217.1
13 7c.)

12 "Documents gathered or generated during the investigation into alleged improprieties by
13 plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
14 if and when they are discoverable." (Ex. "E", response to Special Interrogatory 3; Ex. "F",
15 response to form interrogatory 201.3(d), 201.4(e), 216.1(c), 217.1 7(d); Ex. "G", response
16 to Request for Production, No. 2.)

16 On or about February 16, 2010, counsel for plaintiff sent a letter to defense counsel
17 attempting to meet and confer regarding these discovery responses, and offering to enter into a
18 protective order regarding the information and documents at issue. (Ex. "H") On or about
19 February 24, 2010, counsel for defendant responded to plaintiff's attempt to meet and confer
20 regarding these discovery responses, refusing to produce the information and documents at issue
21 until the alleged investigation was complete, but failing to provide a time frame when if ever the
22 investigation will be complete. (Ex. "I") As such, plaintiff has brought the instant motion to compel
23 the production of the information and documents at issue
24

25 **II. IT IS UNFAIR, UNJUST, AND INEQUITABLE FOR THE DEFENDANT AND**
26 **DEFENDANT'S COUNSEL TO HAVE ACCESS TO AND RELY UPON ALLEGED**
27 **"CONFIDENTIAL" INTERNAL AFFAIRS INVESTIGATION STATEMENTS AND OTHER**
28 **DOCUMENTS TO SUPPORT DEFENDANT'S CLAIMED DENIALS AND DEFENSES IN**
THIS MATTER, BUT DENY PLAINTIFF AND HIS COUNSEL ACCESS TO THE SAME
MATERIALS

1 It is abundantly clear from defendant's responses to written discovery that defendant relies
2 upon the witnesses and contents of alleged confidential investigations against plaintiff to support
3 its general denials and numerous of its affirmative defenses in this matter. Indeed, defendant
4 claims that the "the most serious contributing factor" relied upon by defendant in demoting plaintiff
5 was the alleged improprieties of plaintiff which are the subject of these alleged confidential
6 investigations. Defendant cannot have its cake and eat it too. Plaintiff is entitled to be apprised
7 by defendant under oath of all facts, witnesses, and documents that defendant claims allegedly
8 support its contentions in this matter so that plaintiff may rebut same and demonstrate that such
9 alleged reasons are false, pretextual, and a sham, and that the real reason for the demotion and
10 other adverse employment actions taken against plaintiff was retaliation by defendant for plaintiff
11 engaging in activities protected by *Labor Code* Section 1102.5 and FEHA.

13 The *McDonnell Douglas* burden-shifting framework applies in FEHA retaliation cases as
14 well as discrimination cases under both federal and state law. The same framework also applies
15 to retaliation actions premised on violations of *Labor Code* Section 1102.5. *Patten v. Grant Joint*
16 *Union High School District* (2005) 134 Cal.App.4th 1378. Under this framework, a plaintiff is
17 required to establish a prima facie case, which consists of showing that: a) plaintiff engaged in a
18 protected activity; b) the employer subjected plaintiff to an adverse employment action; and c)
19 a causal link exists between the protected activity and the employer's action. *Passantino v.*
20 *Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 506 (under Title VII);
21 *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1044, 32 Cal.Rptr.3d 436, 446 (under
22 FEHA).

25 The causal link may be based solely on the timing of the relevant actions: "Specifically,
26 when adverse employment decisions are taken within a reasonable period of time after complaints
27 of discrimination have been made, retaliatory intent may be inferred." *Passantino v. Johnson &*
28

1 *Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 507; *Mulhall v. Ashcroft* (6th Cir.
2 2002) 287 F.3d 543, 551; *Mariani-Colon v. Department of Homeland Security ex rel. Chertoff* (1st
3 Cir. 2007) 511 F.3d 216, 224 - temporal proximity (2 months) between protected activity and
4 discharge sufficient for relatively light burden of establishing prima facie case of retaliation.

5 Thus, the temporal relationship between engaging in the protected activity and a
6 subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v. North*
7 *American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on the part of
8 a defendant employer which proceed in linear fashion from whistleblower disclosures and
9 culminating in adverse employment actions present a triable issue of material fact as to a "causal
10 link" between the protected activity and the adverse employment action. *Patten v. Grant Joint*
11 *Union High School District, supra*, 134 Cal.App.4th at 1390. Here, the temporal and linear
12 connection is both direct and obvious. Moreover, the relationship between plaintiff's
13 whistleblowing activities and the adverse employment actions is sufficient by itself to provide
14 circumstantial evidence of retaliation sufficient to establish a prima facie case. In *Colarossi v.*
15 *Coty US Inc.* (2002) 97 Cal. App. 4th 1142, the court noted that "suspicious" timing of the
16 employer's actions may provide the circumstantial link needed to infer that an improper purpose
17 accounted for the adverse action. (*Id.* at 1154.) "The timing of the decision may have been
18 coincidental, but when viewed as part of the mosaic of evidence" plaintiff presented, it will support
19 the causal element of an employment claim. As stated in *Passantino v. Johnson & Johnson*
20 *Consumer Prods., Inc.* (9th Cir 2000) 212 F.3d 493, 507: "[T]his close timing provides
21 circumstantial evidence of retaliation that is sufficient to create a prima facie case of retaliation."
22 (noting that causation can be inferred from timing alone.); See also, e.g. *Miller v. Fairchild Indus.*
23 (9th Cir. 1989) 885 F. 2d 498, 505.
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1 Once plaintiff has established a prima facie case, the employer must then articulate a
2 legitimate, nonretaliatory reason for each of the adverse employment actions taken. If the
3 defendant is able to do so, then the plaintiff must prove the employer's reason is a pretext.
4 *Stegall v. Citadel Broadcasting Co.* (9th Cir. 2003) 350 F.3d 1061, 1065; *Flait v. North American*
5 *Watch Corp.* (1992) 3 Cal.App.4th 467, 475-476.

6
7 Here, plaintiff engaged in the activities of whistleblowing and reporting and protesting
8 discrimination in the workplace, which activities are protected activities under *Labor Code* Section
9 1102.5 and FEHA. Within a short time of engaging in such protected activities plaintiff was
10 demoted from the rank of Deputy Chief to Captain, and has subsequently been placed on
11 administrative leave, based upon alleged reason that plaintiff had engaged in improprieties,
12 including that plaintiff had improperly interfered in and attempted to influence an internal affairs
13 investigation. Plaintiff contends that this alleged reason is false and a sham, and is simply a
14 pretext for retaliating against plaintiff based upon his engaging in the protected activities
15 enumerated above. It is well settled that evidence of dishonest reasons for adverse employment
16 actions proffered by the employer permits a finding of prohibited motive, bias, or intent. *Reeves*
17 *v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St.*
18 *Mary's Honor Center v. Hicks* (1993) 509 U.S. 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.

19
20 Pretext, like a prima facie showing of causation, may be inferred from the timing of the
21 company's termination decision, by the identity of the person making the decision, and by the
22 terminated employee's job performance before termination. *Sada v. Robert F. Kennedy Medical*
23 *Center* (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American Watch Co., supra*,
24 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*, 885 F.2d 498, 505-06 (9th
25 Cir. 1989). These factors support an inference that defendant's stated reason for taking adverse
26 employment actions against plaintiffs were merely a subterfuge for its retaliatory conduct. See,
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1 *Sada v. Robert F. Kennedy Medical Center, supra*, 56 Cal.App.4th at 156; *Flait v. North American*
2 *Watch Co., supra*, 3 Cal.App.4th at 480 ("Viewing the evidence in the light most favorable to [the
3 plaintiff], a reasonable trier of fact could conclude that [the defendant's] articulated reasons for
4 terminating [the plaintiff's] employment are not worthy of credence").

5 As such, the information and documents sought by this motion are directly relevant and
6 discoverable in regard to the defendant's alleged reason for the adverse employment actions
7 taken against plaintiff, and are directly relevant and discoverable in regard to plaintiff establishing
8 that the defendant's proffered reason is false and pretextual.

9
10 **III. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED UNDER**
11 **EVIDENCE CODE SECTION 1040, ET SEQ.**

12 Defendant vaguely claims that the "witness information and documents gathered or
13 generated during the investigation into alleged improprieties by plaintiff, which is ongoing and as
14 such remains confidential and privileged". However, during the meet and confer process in
15 regard to this motion, defendant cited only a single case, *County of Orange v. Superior Court*
16 (2000) 79 Cal.App.4th 759, in support of its position that the information and documents sought
17 are confidential. The *County of Orange* case is readily distinguishable, and does not support
18 defendant withholding the information and documents sought under the facts of this case.

19
20 In the *County of Orange* case, the plaintiffs sought to obtain the files regarding an on-going
21 criminal homicide investigation regarding the murder of a two year old boy in which the plaintiffs
22 had been identified as two of the primary suspects. The court held as follows:

23 "We conclude on the record before us that the public interest in solving C. T. Turner's
24 homicide and bringing the perpetrator(s) to justice outweighed the Wus' interest in
25 obtaining the discovery sought, at least at the time this matter was considered
26 below. We recognize the rather arbitrary nature of this conclusion, but the order we review
27 was made less than a year after this civil action was filed. (And it is still less than three
28 years since it was filed.) When one reflects that the lives of other children may be at
risk with the killer(s) still at large, the important interests in vindicating wronged
plaintiffs and clearing dockets do not seem quite so important. Consequently, we find

1 the superior court abused its discretion in ordering production of the investigative file to the
2 Wus' attorney. And, parenthetically, we think that most reasonable parents in the Wus'
3 position would concur that the interest in apprehending a child's killer must continue to take
4 priority over any civil action of theirs. 79 Cal.App.4th 759, 767 - 768.

5 Here, there is no unsolved homicide of a child that is being investigated by the defendant
6 in which plaintiff is a suspect. Indeed, there is no criminal investigation of any kind being
7 conducted by the defendant in which plaintiff is a suspect. At best, defendant claims to be
8 investigating alleged violations of its own internal policies regarding the conducting of internal
9 affairs investigations. Defendant cannot possibly cite to any public interest in maintaining the
10 confidentiality of the information and documents at issue that approaches in any way the
11 magnitude of the public interest in apprehending the murderer of a two year old boy. Indeed,
12 exactly the opposite is true - the public interest in assuring that law enforcement officials such a
13 plaintiff, the former Deputy Chief of the defendant's own police department, be free to report
14 wrongdoing and discrimination by other members of his police department without fear of
15 retaliation, clearly outweighs any alleged confidentiality interests of the defendant. Here, the
16 public interest overwhelmingly supports that plaintiff be provided with all of the information and
17 documents necessary to rebut defendant's specious and retaliatory claims of misconduct by
18 plaintiff, and to protect plaintiff's statutory rights to report the misconduct of defendant and its
19 employees.

20
21 **IV. PLAINTIFF AND HIS COUNSEL SHOULD BE PROVIDED THE INTERNAL AFFAIRS**
22 **STATEMENTS AND OTHER DOCUMENTS REGARDING THE INCIDENTS AT ISSUE**
23 **IN ORDER TO REBUT DEFENDANT'S ALLEGED REASON FOR TAKING ADVERSE**
24 **ACTIONS AGAINST PLAINTIFF, TO PREPARE FOR DEPOSITIONS AND TRIAL, AND**
25 **TO BE ABLE TO IMPEACH THE TESTIMONY AND REFRESH THE RECOLLECTIONS**
26 **OF WITNESSES, AS HAS BEEN SPECIFICALLY FOUND PROPER IN THE HAGGERTY**
27 **V. SUPERIOR COURT CASE**

28 In *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1089, the court specifically held
that disclosure pursuant to the Pitchess procedure of internal affairs investigation reports and

1 other investigative materials regarding the incident at issue in the civil case against a deputy
2 sheriff, including internal affairs interviews, transcripts, and other data, was proper. Here,
3 similarly, the Court should order the production of all relevant reports, investigative materials,
4 interviews, transcripts, and other data regarding the investigation and disposition of any
5 complaints of misconduct allegedly involving plaintiff.

6
7 Here, as in *Haggerty v. Superior Court*, *supra*, 17 Cal.App. 4th at 1089 - 1091, the facts
8 gleaned from the internal investigations at issue are directly relevant to the matters at issue in the
9 lawsuit. Moreover, as in *Haggerty*, the requested discovery is important, not only for determining
10 the events that occurred during the incidents, but also for plaintiff's counsel to prepare effective
11 cross-examination of defense witnesses, including to impeach witnesses whose testimony at trial
12 differs from statements made to the investigating officers and/or to refresh the recollections of
13 these witnesses. (See *People v. Hustead* (1999) 74 Cal.App.4th 410, 417; see also, *People v.*
14 *Memro*, *supra*, 38 Cal.3d at 677 ["one legitimate goal of [*Pitchess*] discovery is to obtain
15 information 'for possible use to impeach or cross-examine an adverse witness.'] See also, *Garden*
16 *Grove Police Department v. Superior Court*, *supra*, 89 Cal. App. 4th at 433.

17
18 Plaintiff is therefore entitled to the requested information not only to use as substantive
19 evidence to establish that defendant's alleged reasons for the adverse employment actions at
20 issue are pretextual, but also to use to impeach the testimony and/or refresh the recollections of
21 defense and other witnesses. As in *Haggerty*, the investigations at issue concern the very
22 incidents that are the subject of the civil claim. Additionally, as in *Haggerty*, the privacy concerns
23 of defendant and its employees are diminished because they are the persons and/or entities
24 whose conduct is at issue in the litigation, and the requested internal investigation records
25 concern their actions that are alleged to be wrongful and will be fully litigated at trial.
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1 Because of the direct relevance of the information, courts have recognized that the law
2 enforcement records of the investigations of the matters at issue in the case are discoverable and
3 have never imposed any special limitations on this disclosure if the requested discovery otherwise
4 meets the statutory criteria. (See *Robinson v. Superior Court* (1978) 76 Cal.App.3d 968, 978 -
5 "[a]ll statements made by percipient witnesses and witnesses ... related to the incident in question
6 ... are discoverable under the standards set forth in *Pitchess*" ; see also *People v. Alexander*
7 (1983) 140 Cal.App.3d 647, 659, disapproved on another point in *People v. Swain* (1996) 12
8 Cal.4th 593.
9

10 Further, the *Haggerty* court also rejected the contention that the disclosure of relevant
11 internal affairs records would have a chilling effect on every law enforcement agency's ability to
12 conduct an uninhibited, thorough and candid analysis of a complaint, finding such concerns
13 speculative. The court noted that the question of whether police investigation records are
14 discoverable has been unequivocally answered in the affirmative by the Legislature in enacting
15 the *Pitchess* statutory scheme, and that the *Pitchess* "legislation was intended to balance the
16 need of criminal defendants [and civil litigants] to relevant information and the legitimate concerns
17 for confidentiality of police personnel records." *People v. Breaux* (1991) 1 Cal.4th 281, 312. The
18 court held that in balancing these interests, the Legislature made a decision that relevant evidence
19 contained in a personnel file, including internal investigation records and reports, should be
20 disclosed upon a proper showing of materiality and relevance, and did not provide any blanket
21 exceptions to the discoverability of such reports, particularly in the civil context. *Haggerty v.*
22 *Superior Court, supra*, 17 Cal.App. 4th at 1091 - 1092.
23
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25 Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
26 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
27 information and documents sought are directly relevant and material to plaintiff's contentions that
28

1 the reason given for the retaliatory actions by defendant are false, a sham, and simply a pretext
2 for retaliation. Indeed, defendant and its counsel have conceded that such information and
3 documents are relevant by repeatedly referencing same throughout defendant's sworn discovery
4 responses in this matter. As such, the records pertaining to the investigations by defendant of
5 the allegations made against plaintiff are relevant and material. The information and documents
6 sought should be disclosed to plaintiff. In the alternative, such information and documents should
7 be examined by the court *in camera*, and all evidence relevant to plaintiff's claims should be
8 turned over to plaintiff's counsel.
9

10 **V. THE INFORMATION AND DOCUMENTS REQUESTED ARE NOT PRIVILEGED UNDER**
11 **THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT**
12 **DOCTRINE**

13 An employer waives the attorney-client and attorney work product privileges regarding the
14 contents of an investigation by raising the fact of the investigation as a defense. *Wellpoint Health*
15 *Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110, 122-124, 128 - defendants
16 waived attorney-client privilege regarding contents investigation of plaintiff's sexual harassment
17 claim by raising fact of investigation as defense. (See also, *McGrath v. Nassau County Health*
18 *Care Corp.* (ED NY 2001) 204 F.R.D. 240, 244. Where the employer relies on the investigator's
19 report to show that it conducted an adequate investigation of charges, that report will be subject
20 to pretrial discovery, even if the investigator was an attorney. *Wellpoint Health Networks, Inc. v.*
21 *Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110 - employer's pleading adequacy of its investigation
22 as defense waives attorney-client privilege and work product doctrine; *Walker v. Contra Costa*
23 *County* (ND CA 2005) 227 F.R.D. 529, 535 - pleading adequate investigation of harassment
24 complaint as affirmative defense waived attorney-client privilege, self-evaluative privilege and
25 attorney work product protection.
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Further, a report that simply summarizes the investigation or presents factual conclusions for management action, and does not contain confidential legal advice, is not privileged from discovery even if it was prepared by an attorney. *Wellpoint Health Networks, Inc. v. Sup.Ct.* (McCombs) (1997) 59 Cal.App.4th 110, 121-122.

Here, the investigation at issue is being conducted by an investigator named James Gardiner, and not by any attorney. Defendant is specifically relying upon the information and documents generated by this investigation to support its denials and alleged defenses in this matter. As such, even if the attorney-client and/or attorney work product privileges applied to this investigation (which they do not), such privileges have been waived by defendant.

VI. PLAINTIFF IS ENTITLED TO DISCLOSURE OF THE REQUESTED DOCUMENTS

A. Peace Officer Personnel Records Are Expressly Discoverable Pursuant to Evidence Code §1043(a) and 1045(a)

Evidence Code §1043 and 1045(a) provide that if the personnel records and information contained therein are relevant to the subject matter of the litigation, upon motion by the party seeking the records and information there is a right of access to the records of complaints, investigations of complaints, and discipline imposed as a result of such investigations.

Evidence Code §1045(a) provides as follows:

"(a) Nothing in this article shall be construed to affect the right of access to records of complaints, or investigations of complaints, or discipline imposed as a result of such investigations, concerning an event or transaction in which the peace officer participated, or which he perceived, and the manner in which he performed his duties, provided that such information is relevant to the subject matter involved in the pending litigation. (Emphasis added)

This subdivision is "expansive." *Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386, 399. In particular, "relevant information" under *Evidence Code* Section 1045 is not limited to facts that may be admissible at trial, but may include facts that could lead to the discovery of admissible

1 evidence. *People v. Memro*, *supra*, 38 Cal.3d at 681-682; *People v. Hustead*, *supra*, 74
2 Cal.App.4th at 423.

3 Under the statutory scheme, a party seeking discovery of a peace officer's personnel
4 records need only file a written motion describing the type of records sought, supported by
5 "[a]ffidavits showing good cause for the discovery... , setting forth the materiality thereof to the
6 subject matter involved in the pending litigation and stating upon reasonable belief that the
7 governmental agency identified has the records or information from the records." (*Evidence Code*
8 § 1043(b)(3).) This initial burden is a "relatively relaxed standard." *City of Santa Cruz v.*
9 *Municipal Court* (1989) 49 Cal.3d 74, 84. Information is material as defined by *Evidence Code*
10 § 1043(b)(3) if it 'will facilitate the ascertainment of the facts and a fair trial.' "[A] declaration by
11 counsel on information and belief is sufficient to state facts to satisfy the 'materiality' component
12 of that section." *Abatti v. Superior Court*, *supra*, 112 Cal.App.4th at 51.
13

14 In *Santa Cruz v. Municipal Court*, *supra*, 49 Cal.3d 88 - 89, the California Supreme Court
15 held that personal knowledge is not required by *Evidence Code* 1043(b) and that an affidavit on
16 information and belief is sufficient. The Court found that in the context of Pitchess motions, the
17 Legislature had expressly considered and rejected a requirement of personal knowledge. The
18 Court held that the legislative history, the case law background, and the statutory language all
19 point to the same conclusion: the "materiality" component of *Evidence Code* § 1043(b) may be
20 satisfied by affidavits based on information and belief. (49 Cal.3d at 89.)
21

22 In *Abatti v. Superior Court*, *supra*, 112 Cal.App.4th 39, the *Pitchess* motion contained an
23 affidavit of counsel that related statements from other officers that the former officer had been
24 asked to leave, and had been the subject of other complaints, and was labeled a "liability" problem
25 for the department. *Id.* at 46-47. The court considered counsel's affidavit sufficient, even though
26 it merely averred the contents of the counseling memos rather than stating with specificity the
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1 evidence which was contained therein. The court reasoned that to require such "specificity" in the
2 Pitchess process would place the proponent of the motion in a "Catch-22" position of having to
3 allege with particularity the very information he or she is seeking. *Id.* at 47, fn. 7.

4 **VII. THE INFORMATION AND DOCUMENTS SOUGHT ARE RELEVANT AND**
5 **DISCOVERABLE, AND RELATE DIRECTLY TO DISPUTED ISSUES IN THIS CASE**

6 Relevance is defined by *Evidence Code* Section 210, which provides that:

7 "Relevant evidence" means evidence, including evidence relevant to the credibility of a
8 witness or hearsay declarant, having any tendency in reason to prove or disprove any
9 disputed fact that is of consequence to the determination of the action."

10 Relevance to the subject matter is to be broadly construed and is not limited to relevance
11 to the narrow issues of the case. *Greyhound Corporation v. Superior Court* (1961) 56 Cal.2d 355,
12 378, 390. As set forth above, in the *Pitchess* motion context, a declaration by counsel on
13 information and belief is sufficient to state facts to satisfy the 'materiality' component of *Evidence*
14 *Code* § 1043(a). *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 51; *Haggerty v. Superior*
15 *Court, supra*, 17 Cal.App. 4th at 1086.

16 Here, there is a reasonable basis to conclude the internal investigation files at issue
17 contain information that are relevant and material to the lawsuit. (See *Robinson v. Superior Court*,
18 *supra*, 76 Cal.App.3d at 977 [noting that the relevancy of an investigation of the incident that is
19 the basis for the lawsuit is "self-evident"]. Indeed, the records requested involve the investigations
20 of the very matters which are the basis of defendant's alleged defenses in this matter, and are
21 therefore directly relevant to the allegations in this case. Further, such documents, including the
22 statements taken of witnesses during the internal investigations by defendant, are evidence
23 relevant to the credibility of the witnesses.

24 It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
25 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
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1 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
2 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
3 entities and law enforcement agencies with an unfair advantage in defending civil actions. A
4 public entity cannot invoke these code sections to withhold evidence relevant to the case. *Garden*
5 *Grove Police Dept. v. Superior Court* (2001) 89 Cal.App.4th 430, 433, c.f. *People v. Memro* (1985)
6 38 Cal.3d 658, 679. As the court stated in *Gill v. Manuel* (9th Cir. 1973) 488 F.2d 799, 803,
7 *Evidence Code* §1040 is not "intended to provide a shield behind which law enforcement
8 personnel may seek refuge for possible wrongdoings."
9

10 **VIII. PLAINTIFF HAS DEMONSTRATED GOOD CAUSE FOR THE PRODUCTION OF THE**
11 **REQUESTED INFORMATION AND DOCUMENTS**

12 The declaration submitted herewith contains facts that establish a plausible foundation to
13 conclude that defendant engaged in retaliation against plaintiff. The conduct by plaintiff which
14 defendant contends supports its retaliatory actions against plaintiff was the subject of one or
15 more internal affairs investigations by the defendant. Plaintiff contends that the allegations by
16 defendant of misconduct by plaintiff are unfounded, and the information and documents regarding
17 defendant's investigation of such alleged misconduct will demonstrate that the allegations are
18 specious. As such, the facts regarding these matters, which are of consequence to the
19 determination of this action, are disputed between the parties, and the requested information,
20 documents, and items are relevant and discoverable in regard to such disputed issues.
21

22 **IX. CONCLUSION**

23 For each of the foregoing reasons, it is respectfully requested that the Court enter an order
24 directing the defendant to produce the records described in this motion, and to compel defendant
25 to provide the further responses described in the Separate Statements of Interrogatories and
26 Requests and Responses Thereto filed and served concurrently herewith.
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1 Dated: 3/4/10

2 By: 

3 Gregory W. Smith
4 Christopher Brizzolara
5 Attorneys for Plaintiff
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I, Christopher Brizzolara, do declare as follows:

1. I am an attorney at law licensed to practice in the State of California and one of the counsel of record for plaintiff herein. This declaration is made in support of plaintiff's motion to discover peace officer personnel records and to compel further verified responses to interrogatories and requests for production. Except where otherwise indicated, I have personal knowledge of the following, and if called to testify regarding same I could and would competently testify thereto.

2. This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police and currently a Captain employed by the BPD. As testified to by plaintiff in this action, plaintiff has been employed as a sworn peace officer with the BPD for over twenty years and progressed steadily through the ranks of the BPD to the rank of Deputy Chief of Police, the second highest rank in the BPD.

3. In this action, plaintiff contends that on or about November 19, 2007, plaintiff prepared a memorandum which was submitted to then BPD Chief of Police Tim Stehr ("Stehr") requesting that an outside agency be appointed to investigate the burglary of internal affairs files and investigative materials which had been located in the office of BPD Lieutenant Rodriguez. Plaintiff contends that in response, Chief Stehr angrily ordered plaintiff to destroy the memorandum he had prepared, and to delete the conclusion from the investigation conducted by Lieutenant Rodriguez.

4. Plaintiff contends that on or about March 13, 2009, plaintiff complained to Chief Stehr that a BPD lieutenant was sexually harassing females at the Burbank Animal Shelter. Plaintiff

1 contends that he recommended that the lieutenant be placed on leave pending an investigation
2 of the lieutenant's misconduct, that Chief Stehr refused to place the lieutenant on leave, and
3 became angry at plaintiff for making the recommendation.

4 5. Plaintiff contends that on or about March 19 and March 24, 2009, plaintiff informed
5 Burbank City Manager Michael Flad ("Flad"), the highest ranking administrative official in the City
6 of Burbank, about the magnitude of the sexual harassment conducted by the lieutenant at the
7 Burbank Animal Shelter. Plaintiff contends that in or around April and May 2009, on two separate
8 occasions, plaintiff informed Flad that the lieutenant who had been accused of sexually harassing
9 females at the shelter had inside information regarding Chief Stehr, and as a result thereof Chief
10 Stehr had refused to place the lieutenant on administrative leave. Plaintiff contends that he also
11 informed Flad that he believed that the lieutenant had in fact sexually harassed females at the
12 Burbank Animal Shelter.
13

14 6. Plaintiff contends that on or about April 22, 2009, plaintiff informed Flad that documents
15 concerning an excessive force investigation against the BPD were burglarized from Lieutenant
16 Rodriguez' office, and that Chief Stehr was attempting to cover up the burglary. On or about April
17 30, 2009, plaintiff reiterated many of same concerns to Flad.
18

19 7. Plaintiff contends that from in or around April 2008 through May 4, 2009, plaintiff, then the
20 Deputy Chief of Police of the Burbank Police Department, complained on at least eight different
21 occasions to Chief Stehr that minority officers in the BPD were being subjected to discrimination,
22 and were being unjustly targeted for termination. Plaintiff contends on or about April 15, 2009,
23 and again on or about April 18, 2009, plaintiff reported to Burbank City Councilwoman Marsha
24 Ramos, that he believed that minority officers in the BPD were being subjected to discrimination
25 by the BPD by targeting them for unjust termination. Plaintiff contends that on or about April 22,
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2009, and again on or about April 30, 2009, plaintiff reported to Burbank City Manager Flad that he believed there minority officers in the BPD were being subjected to discrimination by the BPD.

8. We contend that thereafter, on or about May 4, 2009, in retaliation for his whistleblowing activities protected pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting discrimination in violation of FEHA against other BPD employees, plaintiff was demoted from the rank of Deputy Chief of Police to the rank of Captain. We further contend that on or about January 21, 2010, plaintiff was placed on involuntary leave by the BPD for specious and unfounded allegations of misconduct.

9. On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code* Section 1102.5 with the defendant.

10. On or about September 17, 2009, we received from defendant a letter and a memorandum purporting to set forth the alleged internal affairs charges against plaintiff. A true and correct copy of that letter and memorandum is submitted herewith as Ex. "A". On or about September 30, 2009, plaintiff was interrogated by defendant regarding these alleged charges.

11. On or about November 11, 2009, we served Request for Admissions, Form Interrogatories Employment Law, Special Interrogatories, and Request for Production of Documents upon the defendant. True and correct copies of that discovery are submitted herewith as Exs. "B" - "D".

12. On or about January 21, 2010, defendant served verified responses to this discovery. True and correct copies of these discovery responses are submitted herewith as Exs. "E" - "G".

13. In particular, in response to plaintiff's Special Interrogatory No. 1 requesting defendant to specify each reason why plaintiff was demoted from the rank of Deputy Chief to the rank of Captain, defendant responded in pertinent part as follows:

"In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. he did not believe that there was a pressing need for the role of the Captain serving in the

capacity of Deputy Chief, and he wanted to have more direct control and contact within the Department. Therefore, he eliminated the assignment of having a Captain serve in the capacity of Deputy Police Chief and reassigned plaintiff as the Captain in command of the Investigations Division.

Part of Chief's Stehr's decision to restructure was based upon a loss of confidence in plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief's assignment. The most serious contributing factor was that Chief Stehr had received allegations of impropriety concerning plaintiff, including that plaintiff had improperly interfered in and attempted to influence an internal affairs investigation. As the Captain with the Deputy Chief's assignment, plaintiff oversaw internal affairs investigations conducted by the Department, which oversight was not appropriate given the allegations against plaintiff. (Emphasis added, Ex. "E", response to Special Interrogatory 1.)

14. This contention regarding the alleged reason for defendant's demotion of plaintiff from the rank of Deputy Chief to the rank of Captain is repeated throughout defendant's written responses to discovery. (See, e.g., Ex. "F", responses to form interrogatories 201.3, 201.4, 216.1, and 217.1.) However, when requested to set forth the facts, witnesses, and documents which allegedly support this contention, defendant has failed to set forth a single fact, witness, or document which supports the contention. Instead, defendant has repeatedly objected to providing such information, stating as follows:

"Witness information gathered or generated during the investigation into alleged improprieties by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided if and when they are discoverable." (Ex. "E", response to Special Interrogatory 2; Ex. "F", response to form interrogatory 201.3c, 201.4(d), 216.1(b), 217.1 7c.)

"Documents gathered or generated during the investigation into alleged improprieties by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided if and when they are discoverable." (Ex. "E", response to Special Interrogatory 3; Ex. "F", response to form interrogatory 201.3(d), 201.4(e), 216.1(c), 217.1 7(d); Ex. "G", response to Request for Production, No. 2.)

15. On or about February 16, 2010, counsel for plaintiff sent a letter to defense counsel attempting to meet and confer regarding these discovery responses, and offering to enter into a

1 protective order regarding the information and documents at issue. A true and correct copy of
2 that letter is submitted herewith as Ex. "H".

3 16. On or about February 24, 2010, counsel for defendant responded to plaintiff's attempt to
4 meet and confer regarding these discovery responses, refusing to produce the information and
5 documents at issue until the alleged investigation was complete, but failing to provide a time frame
6 when if ever the investigation will be complete. A true and correct copy of that letter is submitted
7 herewith as Ex. "I".
8

9 17. As such, plaintiff has brought the instant motion to compel the production of the information
10 and documents at issue.

11 18. It is abundantly clear from defendant's responses to written discovery that defendant relies
12 upon the witnesses and contents of alleged confidential investigations against plaintiff to support
13 its general denials and numerous of its affirmative defenses in this matter. Indeed, defendant
14 claims that the "the most serious contributing factor" relied upon by defendant in demoting plaintiff
15 was the alleged improprieties of plaintiff which are the subject of these alleged confidential
16 investigations. Defendant cannot have its cake and eat it too. Plaintiff is entitled to be apprised
17 by defendant under oath of all facts, witnesses, and documents that defendant claims allegedly
18 support its contentions in this matter so that plaintiff may rebut same and demonstrate that such
19 alleged reasons are false, pretextual, and a sham, and that the real reason for the demotion and
20 other adverse employment actions taken against plaintiff was retaliation by defendant for plaintiff
21 engaging in activities protected by *Labor Code* Section 1102.5 and FEHA.
22

23 19. As such, the information and documents sought by this motion are directly relevant and
24 discoverable in regard to the defendant's alleged reason for the adverse employment actions
25 taken against plaintiff, and are directly relevant and discoverable in regard to plaintiff establishing
26 that the defendant's proffered reason is false and pretextual.
27
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1 20. Here, a plausible foundation exists to conclude that plaintiff was subjected to retaliation by
2 defendant for engaging in activities protected by *Labor Code* Section 1102.5 and FEHA. The
3 information and documents sought are directly relevant and material to plaintiff's contentions that
4 the reason given for the retaliatory actions by defendant are false, a sham, and simply a pretext
5 for retaliation. Indeed, defendant and its counsel have conceded that such information and
6 documents are relevant by repeatedly referencing same throughout defendant's sworn discovery
7 responses in this matter. As such, the records pertaining to the investigations by defendant of
8 the allegations made against plaintiff are relevant and material. The information and documents
9 sought should be disclosed to plaintiff. In the alternative, such information and documents should
10 be examined by the court *in camera*, and all evidence relevant to plaintiff's claims should be
11 turned over to plaintiff's counsel.
12

13 21. Here, there is a reasonable basis to conclude the internal investigation files at issue
14 contain information that are relevant and material to the lawsuit. Indeed, the records requested
15 involve the investigations of the very matters which are the basis of defendant's alleged defenses
16 in this matter, and are therefore directly relevant to the allegations in this case. Further, such
17 documents, including the statements taken of witnesses during the internal investigations by
18 defendant, are evidence relevant to the credibility of the witnesses.
19

20 22. It is unfair, unjust, and inequitable for defendant and its counsel to have access to this
21 information and materials, to rely upon same in denying plaintiff's allegations, and to utilize same
22 to prepare for deposition and trial, and to deny plaintiff's counsel access to the same information
23 and documents. *Evidence Code* Sections 1043 and 1045 are not intended to provide public
24 entities and law enforcement agencies with an unfair advantage in defending civil actions.
25

26 23. The conduct by plaintiff which defendant contends supports its retaliatory actions against
27 plaintiff was the subject of one or more internal affairs investigations by the defendant. Plaintiff
28

1 contends that the allegations by defendant of misconduct by plaintiff are unfounded, and the
2 information and documents regarding defendant's investigation of such alleged misconduct will
3 demonstrate that the allegations are specious. As such, the facts regarding these matters, which
4 are of consequence to the determination of this action, are disputed between the parties, and the
5 requested information, documents, and items are relevant and discoverable in regard to such
6 disputed issues.

7
8 24. By means of this motion, we request that the Court compel defendant to produce the
9 following documents and further verified discovery responses:

10 a. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
11 the Burbank Police Department into allegations that plaintiff William Taylor engaged in any
12 improprieties at any time;

13 a. All documents evidencing or pertaining to any investigations by the City of Burbank and/or
14 the Burbank Police Department into allegations that plaintiff William Taylor improperly interfered
15 in and attempted to influence an internal affairs investigation;

16
17 b. All documents evidencing or pertaining to Burbank Police Department internal affairs
18 investigation 04-16-09-1;

19 c. All documents evidencing or pertaining to Burbank Police Department internal affairs
20 investigation 04-26-08-1;

21 d. All statements, including all audio tapes and transcriptions thereof, taken during any
22 internal affairs or other investigation regarding allegations that plaintiff William Taylor improperly
23 interfered in and attempted to influence an internal affairs investigation;

24
25 e. Any personnel or other complaints by any person against William Taylor;

26 f. All documents evidencing or pertaining to any investigation, and the findings, evidence
27 gathered in connection with, and/or disposition, including any discipline imposed, regarding any
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1 investigation conducted by the City of Burbank and/or the Burbank Police Department, and/or their
2 agents or employees regarding any of the above matters, including the entire internal affairs files;

3 g. All statements taken by of witnesses pertaining to allegations that plaintiff William Taylor
4 improperly interfered in and attempted to influence an internal affairs investigation;

5 h. All documents pertaining to any allegations that plaintiff William Taylor improperly
6 interfered in and attempted to influence an internal affairs investigation;

7
8 i. All documents generated by the Burbank Police Department pertaining to any allegations
9 that plaintiff William Taylor improperly interfered in and attempted to influence an internal affairs
10 investigation;

11 j. All documents evidencing or pertaining to any discipline, including but not limited to oral
12 warnings, written warnings, reprimands, suspensions, and termination, imposed by the City of
13 Burbank, the Burbank Police Department, and/or their agents or employees against William Taylor
14 regarding any of the above described matters; and

15 k. All documents evidencing or pertaining to any complaints, any investigations of any such
16 complaints, and the disposition of any such complaints, made by any person against William
17 Taylor for conduct engaged in by William Taylor while he has been a member of the Burbank
18 Police Department, including internal complaints, personnel complaints, governmental claims,
19 or civil lawsuits;

20
21 l. The identification of all facts and witnesses through verified interrogatory responses that
22 allegedly support any allegations that plaintiff William Taylor improperly interfered in and
23 attempted to influence an internal affairs investigation;

24 m. The identification and production of all documents through further verified discovery
25 responses that allegedly support any allegations that plaintiff William Taylor improperly interfered
26 in and attempted to influence an internal affairs investigation.
27

1 n. Further verified responses by defendant, without objection, to the interrogatories and
2 requests for production of documents set forth in the Separate Statements of Interrogatories and
3 Categories and Responses Thereto filed and served concurrently herewith.

4 25. The provision of the "names and addresses" of the complainants against the peace officers
5 identified herein is not be a sufficient response, and all documents evidencing and/or pertaining
6 to the complaints, investigative documents regarding the complaints, and disposition of the
7 complaints are requested. The relevance of these documents is substantial and not tangential.
8 These documents are directly relevant and material to establishing plaintiff's allegations that the
9 defendant committed the various retaliatory conduct of which it is accused, and to rebut the
10 alleged denials and affirmative defenses of defendant in this matter.
11

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed this 4th day of March, 2010, at Santa Monica, California.

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18 CHRISTOPHER BRIZZOLARA
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EXHIBIT "A"



CITY OF BURBANK
200 NORTH THIRD STREET, P.O. BOX 6459, BURBANK, CALIFORNIA 91510-6459

September 17, 2009

VIA FACSIMILE & U.S. MAIL

Attorney Gregory W. Smith
Law Offices of Smith and Lipow
9952 Santa Monica Boulevard
Beverly Hills, California 90212

Subject: William Taylor

Dear Mr. Smith:

The purpose of this letter is to request that you personally serve your client, Burbank Police Captain William Taylor, with the attached notice of Administrative Investigation, which orders him to appear for an interview on Wednesday, September 30th, 2009, at 0900 hours. The interview will be conducted in the City's Administrative Services Building, located at 301 East Olive Avenue, Room 305. Failure to appear on that date for that interview will be considered insubordination.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Stehr", is written over a horizontal line.

Tim Stehr
Chief of Police

p

BURBANK POLICE DEPARTMENT MEMORANDUM

DATE: September 17, 2009
TO: Captain Bill Taylor
FROM: Tim Stehr, Chief of Police
SUBJECT: Administrative Investigation (4-16-09-1)

The purpose of this memorandum is to inform you that you are the subject of an Administrative Investigation. The nature of this investigation is as follows: (1) Your participation in what is commonly referred to as the PORTOS Bakery robbery which occurred on December 28, 2007; (2) Your alleged obstruction of the internal administrative investigation process; (3) Your failure to thoroughly investigate or act upon possible excessive force incidents committed by department employees during 2007-2009; (5) Compliance with department reporting requirements in use of force situations; (6) Compliance with department rules and regulations regarding initiation of internal affairs investigations; (7) Your inability to maintain proper working relationships with other fellow officers; (8) Your failure to comply with an order to participate in an interview with City Attorney personnel in June of 2009.

Since this present investigation regards events formerly examined in Internal Affairs Personnel Investigation No. 04-26-08-1, yet is broader in scope and regards subsequent conduct as well, Internal Affairs Personnel Investigation No. 04-26-08-1 shall be incorporated into this investigation 04-16-09-1.

The Department is investigating the possibility that you may have violated the following:

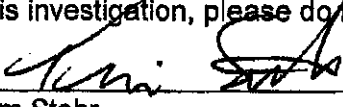
- 1) **BPD MOU Article VI, Section B.22.** – Violation of administrative rules and regulations.
- 2) **BPD Duty Manual Part 1, Section 2, Article 6.4** – Peace officers shall maintain the integrity of their profession through complete disclosure of those who violate any of the rules of conduct, violate any law, or who conduct themselves in a manner which tends to discredit the profession.
- 3) **BPD MOU Article VI, Section B.2.** – Neglect of Duty.
- 4) **BPD MOU Article VI, Section B.11** – Inability to establish and maintain working relationships with fellow officers or employees
- 5) **BPD MOU Article VI, Section B.1'** – Violation of any official regulation or order or failure to obey any proper direction made and given by a superior,...

You shall be administratively interviewed and it is mandatory that you attend and understand that you are ORDERED to appear on the scheduled date and time, and to fully and honestly answer each and every question presented to you by the city-retained investigator (see below). Your failure to comply with every aspect of this ORDER shall constitute a disciplinable act of misconduct. I am aware that you are on a doctor-directed leave of absence. Accordingly, you are not expected or required to perform law enforcement duties during this interview. However, the scope and urgency that this investigation be promptly completed necessitates your interview being now conducted, and this order has been issued notwithstanding your doctor's memorandum. As a courtesy, and to insulate you from contact with other law enforcement personnel, your interview shall be conducted at the Administrative Services Building, 301 E. Olive Avenue, 3rd floor, room 305 (small conference room), on **Wednesday, September 30, 2009, at 0900 hours.**

Licensed Private Investigator James Gardiner has been retained to conduct both the internal administrative investigation and to conduct your interview. Captain Varner will also participate in the interview. You are hereby ordered by the Office of the Chief of Police to attend the above interview and to fully and honestly answer each and every question asked of you by Mr. Gardiner. Failure to do so shall constitute an act of insubordination which in and of itself shall be the basis for disciplinary action. During this interview, you have the right to have a representative of your choice present who is not a part of this investigation.

You are officially ordered not to discuss this investigation or the allegations with anyone other than your chosen representative, your attorney, or Mr. Gardiner. This includes, but is not limited to, any oral or written communication, either on or off-duty. At this time, I am ordering you to notify me of any notes or recordings you have regarding this incident.

For the benefit of all parties involved, this investigation will be completed as swiftly as possible. Should you have any questions or concerns that surface during the course of this investigation, please do not hesitate to contact me at **(818)238-3214**.



Tim Stehr
Chief of Police

(Employee's signature and date served)

EXHIBIT "B"

1 GREGORY W. SMITH (SBN 134385)
2 **LAW OFFICES OF GREGORY W. SMITH**

3 6300 Canoga Avenue, Suite 1590
4 Woodland Hills, California 91367

5 Telephone: (818) 712-4000
6 (213) 385-3400

7 Telecopier: (818) 712-4004

8 CHRISTOPHER BRIZZOLARA (SBN 130304)

9 1528 16th Street
10 Santa Monica, California 90404

11 Telephone: (310) 394-6447

12 Telecopier: (310) 656-7701

13 Attorneys for Plaintiff

14 WILLIAM TAYLOR

15 **UNLIMITED JURISDICTION**

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 WILLIAM TAYLOR,

19 Plaintiff,

20 vs.

21 CITY OF BURBANK and DOES 1 through
22 100, inclusive,

23 Defendants.

24 **CASE NO. BC 422 252**

25 **[Assigned to Terry A. Green, Judge,
26 Dept. 14]**

27 **PLAINTIFF'S SPECIAL
28 INTERROGATORIES, SET ONE**

Action Filed: September 22, 2009

29 **PROPOUNDING PARTY:** Plaintiff WILLIAM TAYLOR

30 **RESPONDING PARTY:** Defendant CITY OF BURBANK

31 **SET NUMBER:** One

32 Plaintiff WILLIAM TAYLOR ("plaintiff"), hereby demands that Defendant CITY OF
33 BURBANK respond under oath, within thirty (30) days after service of the Special
34 Interrogatories to Defendant, the interrogatories propounded herein pursuant to *Code of*
35 *Civil Procedure* §§ 2030.070 and 2030.260.

I.

DEFINITIONS

1. "YOU" and "YOUR" shall refer to City of Burbank, his/its agents, attorneys, employers, employees, and all other persons acting or purporting to act on his/its behalf.

2. The term "DOCUMENT" and "DOCUMENTS," as used herein, shall mean and refer to any kind of written, typewritten, printed or graphic materials, and intangible recording of any form of statement, communication or representations and all other data compilations from which information can be obtained (translated, if necessary, by YOU, through detection devices into reasonably usable forms) including, but not limited to, writings and all non-identical copies and drafts thereof, notes, memoranda, letters, facsimiles, calendars, appointment books, diaries, notes or minutes of meetings or conversations, agreements, microfilms, standards, guidelines, computer printouts, electronically-stored data and files, e-mails, tapes and sound recordings, inter-office and intra-office communications, reports, photographs, ledger sheets, invoices, receipts, correspondence, appointment book entries, guest calendar entries, telephone logs, telegrams, telexes, minutes, notices, reports, contracts, directives, instructions, court papers, graphic representations, lists of persons or things, books, pamphlets, manuscripts, manuals, canceled checks, mechanical and electronic data processing cards, disks, statistical tapes, memoranda made of any telephone communication, diagrams, and of any other form of writing as defined in Section 250 of the *California Evidence Code*, which is in YOUR possession, custody or control. Without limiting the term "control" as used in the preceding sentence, a document shall be deemed to be within YOUR control, regardless of its physical location, if YOU have the right to secure the document or a copy thereof from any person or entity, either public or private,

1 including, but not limited to, YOUR legal counsel, having actual possession thereof.

2 3. "PERSON" refers to any individual or entity of any kind.

3 **INTERROGATORIES**

4 **INTERROGATORY NO. 1:**

5 State each and every reason for the demotion of Plaintiff from the rank of Deputy
6 Chief to Captain.
7

8 **INTERROGATORY NO. 2:**

9 Identify each and every witness that has knowledge for the reasons of the
10 demotion of Plaintiff from the rank of Deputy Chief to Captain.

11 **INTERROGATORY NO. 3:**

12 Identify each and every DOCUMENT that refers or relates in any way to the
13 demotion of Plaintiff from the rank of Deputy Chief to Captain.
14

15 **INTERROGATORY NO. 4:**

16 What, if any information, did city manager Mike Flad have concerning the demotion
17 of Plaintiff from the rank of Deputy Chief?

18 **INTERROGATORY NO. 5:**

19 Did Plaintiff ever make a complaint to any employee, including the city manager, of
20 the city of Burbank, regarding racial discrimination?
21

22 **INTERROGATORY NO. 6:**

23 If the answer to interrogatory number 5 is yes, please state the contents of each
24 complaint.

25 **INTERROGATORY NO. 7:**

26 If the answer to interrogatory number 5 is yes, please state the names of any
27 witnesses to each complaint.
28

1 **INTERROGATORY NO. 8:**

2 If the answer to interrogatory number 5 is yes, please identify any DOCUMENTS
3 that refer to each complaint.
4

5 Dated: November 11, 2009

LAW OFFICES OF GREGORY W. SMITH

7 By: 

8 GREGORY W. SMITH
9 Attorneys for Plaintiff
10 WILLIAM TAYLOR
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)

3 COUNTY OF LOS ANGELES)

4 I am employed in the County of Los Angeles, State of California. I am over the age
5 of 18 years of age, and am not a party to the within action; my business address is 6300
6 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

7 On the date hereinbelow specified, I served the foregoing document, described as
8 set forth below on the interested parties in this action by placing true copies thereof
enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

9 DATE OF SERVICE : November 11, 2009

10 DOCUMENT SERVED : **PLAINTIFF'S SPECIAL INTERROGATORIES,**
11 **SET ONE**

12 PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

13 XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid
14 to be placed in the United States mail at Woodland Hills, California. I am "readily
15 familiar" with firm's practice of collection and processing correspondence for
16 mailing. It is deposited with U.S. postal service on that same day in the ordinary
17 course of business. I am aware that on motion of party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one
day after date of deposit for mailing in affidavit.

18 XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to
19 **Christopher Brizzolara, Esq.** at the following e-mail address:
samurai@adelphia.net.

20 XXX (STATE) I declare under penalty of perjury under the laws of the State of California
21 that the above is true and correct.

22 — (FEDERAL) I declare that I am employed in the office of a member of the bar of this
23 court at whose direction the service was made.

24 EXECUTED at Woodland Hills, California on November 11, 2009.

25 _____
Selma I. Francia

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

EXHIBIT "C"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GREGORY W. SMITH (SEN 134385) LAW OFFICES OF GREGORY W. SMITH 6300 CANOGA AVENUE, SUITE 1590 WOODLAND HILLS, CALIFORNIA 91367	
TELEPHONE NO.: (818) 712-4000 FAX NO. (Optional): (818) 712-4004 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff WILLIAM TAYLOR	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF LOS ANGELES - CENTRAL DISTRICT	
SHORT TITLE: WILLIAM TAYLOR v. CITY OF BURBANK, et al.	
FORM INTERROGATORIES – EMPLOYMENT LAW Asking Party: Plaintiff WILLIAM TAYLOR Answering Party: Defendant CITY OF BURBANK Set No.: One	CASE NUMBER: BC 422 252

Sec. 1. Instructions to All Parties

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in employment cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

- (a) These form interrogatories are designed for optional use by parties in employment cases. (Separate sets of interrogatories, *Form Interrogatories—General* (form DISC-001) and *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004) may also be used where applicable in employment cases.)
- (b) Insert the names of the **EMPLOYEE** and **EMPLOYER** to whom these interrogatories apply in the definitions in sections 4(d) and (e) below.
- (c) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (d) The interrogatories in section 211.0, Loss of Income Interrogatories to Employer, should not be used until the employer has had a reasonable opportunity to conduct an investigation or discovery of the employee's injuries and damages.
- (e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

- (a) You must answer or provide another appropriate response to each interrogatory that has been checked below.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:
I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

- (b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.
- (c) **EMPLOYMENT** means a relationship in which an **EMPLOYEE** provides services requested by or on behalf of an **EMPLOYER**, other than an independent contractor relationship.
- (d) **EMPLOYEE** means a **PERSON** who provides services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYEE** refers to (insert name): **WILLIAM TAYLOR**
- (If no name is inserted, **EMPLOYEE** means all such **PERSONS**.)
- (e) **EMPLOYER** means a **PERSON** who employs an **EMPLOYEE** to provide services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYER** refers to (insert name): **CITY OF BURBANK, BURBANK POLICE DEPARTMENT**
- (If no name is inserted, **EMPLOYER** means all such **PERSONS**.)
- (f) **ADVERSE EMPLOYMENT ACTION** means any **TERMINATION**, suspension, demotion, reprimand, loss of pay, failure or refusal to hire, failure or refusal to promote, or other action or failure to act that adversely affects the **EMPLOYEE'S** rights or interests and which is alleged in the **PLEADINGS**.
- (g) **TERMINATION** means the actual or constructive termination of employment and includes a discharge, firing, layoff, resignation, or completion of the term of the employment agreement.
- (h) **PUBLISH** means to communicate orally or in writing to anyone other than the plaintiff. This includes communications by one of the defendant's employees to others. (*Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 284.)
- (i) **PLEADINGS** means the original or most recent amended version of any complaint, answer, cross-complaint, or answer to cross-complaint.
- (j) **BENEFIT** means any benefit from an **EMPLOYER**, including an "employee welfare benefit plan" or "employee pension benefit plan" within the meaning of Title 29 United States Code section 1002(1) or (2) or ERISA.
- (k) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).
- (l) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.
- (m) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories for employment law cases have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

- 200.0 Contract Formation
- 201.0 Adverse Employment Action
- 202.0 Discrimination Interrogatories to Employee
- 203.0 Harassment Interrogatories to Employee
- 204.0 Disability Discrimination
- 205.0 Discharge in Violation of Public Policy
- 206.0 Defamation
- 207.0 Internal Complaints
- 208.0 Governmental Complaints
- 209.0 Other Employment Claims by Employee or Against Employer
- 210.0 Loss of Income Interrogatories to Employee
- 211.0 Loss of Income Interrogatories to Employer
- 212.0 Physical, Mental, or Emotional Injuries—Interrogatories to Employee
- 213.0 Other Damages Interrogatories to Employee
- 214.0 Insurance
- 215.0 Investigation
- 216.0 Denials and Special or Affirmative Defenses
- 217.0 Response to Request for Admissions

200.0 Contract Formation

- ☐ 200.1 Do you contend that the **EMPLOYMENT** relationship was at "at will"? If so:
- (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.
- ☐ 200.2 Do you contend that the **EMPLOYMENT** relationship was not "at will"? If so:
- (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.
- ☐ 200.3 Do you contend that the **EMPLOYMENT** relationship was governed by any agreement—written, oral, or implied? If so:
- (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.

☒ 200.4 Was any part of the parties' **EMPLOYMENT** relationship governed in whole or in part by any written rules, guidelines, policies, or procedures established by the **EMPLOYER**? If so, for each **DOCUMENT** containing the written rules, guidelines, policies, or procedures:

- (a) state the date and title of the **DOCUMENT** and a general description of its contents;
- (b) state the manner in which the **DOCUMENT** was communicated to employees; and
- (c) state the manner, if any, in which employees acknowledged either receipt of the **DOCUMENT** or knowledge of its contents.

☒ 200.5 Was any part of the parties' **EMPLOYMENT** relationship covered by one or more collective bargaining agreements or memorandums of understanding between the **EMPLOYER** (or an association of employers) and any labor union or employee association? If so, for each collective bargaining agreement or memorandum of understanding, state:

- (a) the names and **ADDRESSES** of the parties to the collective bargaining agreement or memorandum of understanding;
- (b) the beginning and ending dates, if applicable, of the collective bargaining agreement or memorandum of understanding; and
- (c) which parts of the collective bargaining agreement or memorandum of understanding, if any, govern (1) any dispute or claim referred to in the **PLEADINGS** and (2) the rules or procedures for resolving any dispute or claim referred to in the **PLEADINGS**.

☐ 200.6 Do you contend that the **EMPLOYEE** and the **EMPLOYER** were in a business relationship other than an **EMPLOYMENT** relationship? If so, for each relationship:

- (a) state the names of the parties to the relationship;
- (b) identify the relationship; and
- (c) state all facts upon which you base your contention that the parties were in a relationship other than an **EMPLOYMENT** relationship.

201.0 Adverse Employment Action

☐ 201.1 Was the **EMPLOYEE** involved in a **TERMINATION**? If so:

- (a) state all reasons for the **EMPLOYEE'S TERMINATION**;
- (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who participated in the **TERMINATION** decision;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in the **TERMINATION** decision; and
- (d) identify all **DOCUMENTS** relied upon in the **TERMINATION** decision.

☐ 201.2 Are there any facts that would support the **EMPLOYEE'S TERMINATION** that were first discovered after the **TERMINATION**? If so:

- (a) state the specific facts;
- (b) state when and how **EMPLOYER** first learned of each specific fact;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the specific facts; and
- (d) identify all **DOCUMENTS** that evidence these specific facts.

☒ 201.3 Were there any other **ADVERSE EMPLOYMENT ACTIONS**, including (the asking party should list the **ADVERSE EMPLOYMENT ACTIONS**): **DEMOTION TO CAPTAIN**

If so, for each action, provide the following:

- (a) all reasons for each **ADVERSE EMPLOYMENT ACTION**;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** who participated in making each **ADVERSE EMPLOYMENT ACTION** decision;
- (c) the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision; and
- (d) the identity of all **DOCUMENTS** relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision.

☒ 201.4 Was the **TERMINATION** or any other **ADVERSE EMPLOYMENT ACTIONS** referred to in Interrogatories 201.1 through 201.3 based in whole or in part on the **EMPLOYEE'S** job performance? If so, for each action:

- (a) identify the **ADVERSE EMPLOYMENT ACTION**;
- (b) identify the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**;
- (c) identify any rules, guidelines, policies, or procedures that were used to evaluate the **EMPLOYEE'S** specific job performance;
- (d) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who had responsibility for evaluating the specific job performance of the **EMPLOYEE**;
- (e) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**; and
- (f) describe all warnings given with respect to the **EMPLOYEE'S** specific job performance.

☒ 201.5 Was any PERSON hired to replace the EMPLOYEE after the EMPLOYEE'S TERMINATION or demotion? If so, state the PERSON'S name, job title, qualifications, ADDRESS and telephone number, and the date the PERSON was hired.

☒ 201.6 Has any PERSON performed any of the EMPLOYEE'S former job duties after the EMPLOYEE'S TERMINATION or demotion? If so:

- (a) state the PERSON'S name, job title, ADDRESS, and telephone number;
- (b) identify the duties; and
- (c) state the date on which the PERSON started to perform the duties.

☐ 201.7 If the ADVERSE EMPLOYMENT ACTION involved the failure or refusal to select the EMPLOYEE (for example, for hire, promotion, transfer, or training), was any other PERSON selected instead? If so, for each ADVERSE EMPLOYMENT ACTION, state the name, ADDRESS, and telephone number of each PERSON selected; the date the PERSON was selected; and the reason the PERSON was selected instead of the EMPLOYEE.

202.0 Discrimination—Interrogatories to Employee

☐ 202.1 Do you contend that any ADVERSE EMPLOYMENT ACTIONS against you were discriminatory? If so:

- (a) identify each ADVERSE EMPLOYMENT ACTION that involved unlawful discrimination;
- (b) identify each characteristic (for example, gender, race, age, etc.) on which you base your claim or claims of discrimination;
- (c) state all facts upon which you base each claim of discrimination;
- (d) state the name, ADDRESS, and telephone number of each PERSON with knowledge of those facts; and
- (e) identify all DOCUMENTS evidencing those facts.

☐ 202.2 State all facts upon which you base your contention that you were qualified to perform any job which you contend was denied to you on account of unlawful discrimination.

203.0 Harassment—Interrogatories to Employee

☐ 203.1 Do you contend that you were unlawfully harassed in your employment? If so:

- (a) state the name, ADDRESS, telephone number, and employment position of each PERSON whom you contend harassed you;
- (b) for each PERSON whom you contend harassed you, describe the harassment;

- (c) identify each characteristic (for example, gender, race, age, etc.) on which you base your claim of harassment;
- (d) state all facts upon which you base your contention that you were unlawfully harassed;
- (e) state the name, ADDRESS, and telephone number of each PERSON with knowledge of those facts; and
- (f) identify all DOCUMENTS evidencing those facts.

204.0 Disability Discrimination

☐ 204.1 Name and describe each disability alleged in the PLEADINGS.

☐ 204.2 Does the EMPLOYEE allege any injury or illness that arose out of or in the course of EMPLOYMENT? If so, state:

- (a) the nature of such injury or illness;
- (b) how such injury or illness occurred;
- (c) the date on which such injury or illness occurred;
- (d) whether EMPLOYEE has filed a workers' compensation claim. If so, state the date and outcome of the claim; and
- (e) whether EMPLOYEE has filed or applied for disability benefits of any type. If so, state the date, identify the nature of the benefits applied for, and the outcome of any such application.

☐ 204.3 Were there any communications between the EMPLOYEE (or the EMPLOYEE'S HEALTH CARE PROVIDER) and the EMPLOYER about the type or extent of any disability of EMPLOYEE? If so:

- (a) state the name, ADDRESS, and telephone number of each person who made or received the communications;
- (b) state the name, ADDRESS, and telephone number of each PERSON who witnessed the communications;
- (c) describe the date and substance of the communications; and
- (d) identify each DOCUMENT that refers to the communications.

☐ 204.4 Did the EMPLOYER have any information about the type, existence, or extent of any disability of EMPLOYEE other than from communications with the EMPLOYEE or the EMPLOYEE'S HEALTH CARE PROVIDER? If so, state the sources and substance of that information and the name, ADDRESS, and telephone number of each PERSON who provided or received the information.

☐ 204.5 Did the EMPLOYEE need any accommodation to perform any function of the EMPLOYEE'S job position or need a transfer to another position as an accommodation? If so, describe the accommodations needed.

204.6 Were there any communications between the **EMPLOYEE** (or the **EMPLOYEE'S HEALTH CARE PROVIDER**) and the **EMPLOYER** about any possible accommodation of **EMPLOYEE**? If so, for each communication:

- (a) state the name, **ADDRESS**, and telephone number of each **PERSON** who made or received the communication;
- (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who witnessed the communication;
- (c) describe the date and substance of the communication; and
- (d) identify each **DOCUMENT** that refers to the communication.

☐ 204.7 What did the **EMPLOYER** consider doing to accommodate the **EMPLOYEE**? For each accommodation considered:

- (a) describe the accommodation considered;
- (b) state whether the accommodation was offered to the **EMPLOYEE**;
- (c) state the **EMPLOYEE'S** response; or
- (d) if the accommodation was not offered, state all the reasons why this decision was made;
- (e) state the name, **ADDRESS**, and telephone number of each **PERSON** who on behalf of **EMPLOYER** made any decision about what accommodations, if any, to make for the **EMPLOYEE**; and
- (f) state the name, **ADDRESS**, and telephone number of each **PERSON** who on behalf of the **EMPLOYER** made or received any communications about what accommodations, if any, to make for the **EMPLOYEE**.

205.0 Discharge in Violation of Public Policy

☐ 205.1 Do you contend that the **EMPLOYER** took any **ADVERSE EMPLOYMENT ACTION** against you in violation of public policy? If so:

- (a) identify the constitutional provision, statute, regulation, or other source of the public policy that you contend was violated; and
- (b) state all facts upon which you base your contention that the **EMPLOYER** violated public policy.

206.0 Defamation

☐ 206.1 Did the **EMPLOYER'S** agents or employees **PUBLISH** any of the allegedly defamatory statements identified in the **PLEADINGS**? If so, for each statement:

- (a) identify the **PUBLISHED** statement;
- (b) state the name, **ADDRESS**, telephone number, and job title of each person who **PUBLISHED** the statement;
- (c) state the name, **ADDRESS**, and telephone number of each person to whom the statement was **PUBLISHED**;

- (d) state whether, at the time the statement was **PUBLISHED**, the **PERSON** who **PUBLISHED** the statement believed it to be true; and
- (e) state all facts upon which the **PERSON** who published the statement based the belief that it was true.

☐ 206.2 State the name and **ADDRESS** of each agent or employee of the **EMPLOYER** who responded to any inquiries regarding the **EMPLOYEE** after the **EMPLOYEE'S TERMINATION**.

☐ 206.3 State the name and **ADDRESS** of the recipient and the substance of each post-**TERMINATION** statement **PUBLISHED** about **EMPLOYEE** by any agent or employee of **EMPLOYER**.

207.0 Internal Complaints

☒ 207.1 Were there any internal written policies or regulations of the **EMPLOYER** that apply to the making of a complaint of the type that is the subject matter of this lawsuit? If so:

- (a) state the title and date of each **DOCUMENT** containing the policies or regulations and a general description of the **DOCUMENT'S** contents;
- (b) state the manner in which the **DOCUMENT** was communicated to **EMPLOYEES**;
- (c) state the manner, if any, in which **EMPLOYEES** acknowledged receipt of the **DOCUMENT** or knowledge of its contents, or both;
- (d) state, if you contend that the **EMPLOYEE** failed to use any available internal complaint procedures, all facts that support that contention; and
- (e) state, if you contend that the **EMPLOYEE'S** failure to use internal complaint procedures was excused, all facts why the **EMPLOYEE'S** use of the procedures was excused.

☒ 207.2 Did the **EMPLOYEE** complain to the **EMPLOYER** about any of the unlawful conduct alleged in the **PLEADINGS**? If so, for each complaint:

- (a) state the date of the complaint;
- (b) state the nature of the complaint;
- (c) state the name and **ADDRESS** of each **PERSON** to whom the complaint was made;
- (d) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who investigated the complaint;
- (e) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who participated in making decisions about how to conduct the investigation;

- (f) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who was interviewed or who provided an oral or written statement as part of the investigation of the complaint;
- (g) state the nature and date of any action taken in response to the complaint;
- (h) state whether the **EMPLOYEE** who made the complaint was made aware of the actions taken by the **EMPLOYER** in response to the complaint, and, if so, state how and when;
- (i) identify all **DOCUMENTS** relating to the complaint, the investigation, and any action taken in response to the complaint; and
- (j) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the **EMPLOYEE'S** complaint or the **EMPLOYER'S** response to the complaint.

208.0 Governmental Complaints

- ☐ 208.1 Did the **EMPLOYEE** file a claim, complaint, or charge with any governmental agency that involved any of the material allegations made in the **PLEADINGS**? If so, for each claim, complaint, or charge:
- (a) state the date on which it was filed;
 - (b) state the name and **ADDRESS** of the agency with which it was filed;
 - (c) state the number assigned to the claim, complaint, or charge by the agency;
 - (d) state the nature of each claim, complaint, or charge made;
 - (e) state the date on which the **EMPLOYER** was notified of the claim, complaint, or charge;
 - (f) state the name, **ADDRESS**, and telephone number of all **PERSONS** within the governmental agency with whom the **EMPLOYER** has had any contact or communication regarding the claim, complaint, or charge;
 - (g) state whether a right to sue notice was issued and, if so, when; and
 - (h) state whether any findings or conclusions regarding the complaint or charge have been made, and, if so, the date and description of the agency's findings or conclusions.
- ☒ 208.2 Did the **EMPLOYER** respond to any claim, complaint, or charge identified in Interrogatory 208.1? If so, for each claim, complaint, or charge:
- (a) state the nature and date of any investigation done or any other action taken by the **EMPLOYER** in response to the claim, complaint, or charge;
 - (b) state the name, **ADDRESS**, telephone number, and job title of each person who investigated the claim, complaint, or charge;
 - (c) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who participated in making decisions about how to conduct the investigation; and

- (d) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who was interviewed or who provided an oral or written statement as part of the investigation.

209.0 Other Employment Claims by Employee or Against Employer

- ☐ 209.1 Except for this action, in the past 10 years has the **EMPLOYEE** filed a civil action against any employer regarding the **EMPLOYEE'S** employment? If so, for each civil action:
- (a) state the name, **ADDRESS**, and telephone number of each employer against whom the action was filed;
 - (b) state the court, names of the parties, and case number of the civil action;
 - (c) state the name, **ADDRESS**, and telephone number of any attorney representing the **EMPLOYEE**; and
 - (d) state whether the action has been resolved or is pending.
- ☐ 209.2 Except for this action, in the past 10 years has any employee filed a civil action against the **EMPLOYER** regarding his or her employment? If so, for each civil action:
- (a) state the name, **ADDRESS**, and telephone number of each employee who filed the action;
 - (b) state the court, names of the parties, and case number of the civil action;
 - (c) state the name, **ADDRESS**, and telephone number of any attorney representing the **EMPLOYER**; and
 - (d) state whether the action has been resolved or is pending.

210.0 Loss of Income—Interrogatories to Employee

- ☐ 210.1 Do you attribute any loss of income, benefits, or earning capacity to any **ADVERSE EMPLOYMENT ACTION**? (If your answer is "no," do not answer Interrogatories 210.2 through 210.6.)
- ☐ 210.2 State the total amount of income, benefits, or earning capacity you have lost to date and how the amount was calculated.
- ☐ 210.3 Will you lose income, benefits, or earning capacity in the future as a result of any **ADVERSE EMPLOYMENT ACTION**? If so, state the total amount of income, benefits, or earning capacity you expect to lose, and how the amount was calculated.
- ☐ 210.4 Have you attempted to minimize the amount of your lost income? If so, describe how; if not, explain why not.

210.5 Have you purchased any benefits to replace any benefits to which you would have been entitled if the **ADVERSE EMPLOYMENT ACTION** had not occurred? If so, state the cost for each benefit purchased.

210.6 Have you obtained other employment since any **ADVERSE EMPLOYMENT ACTION**? If so, for each new employment:

- (a) state when the new employment commenced;
- (b) state the hourly rate or monthly salary for the new employment; and
- (c) state the benefits available from the new employment.

211.0 Loss of Income—Interrogatories to Employer
[See instruction 2(d).]

☒ 211.1 Identify each type of **BENEFIT** to which the **EMPLOYEE** would have been entitled, from the date of the **ADVERSE EMPLOYMENT ACTION** to the present, if the **ADVERSE EMPLOYMENT ACTION** had not happened and the **EMPLOYEE** had remained in the same job position. For each type of benefit, state the amount the **EMPLOYER** would have paid to provide the benefit for the **EMPLOYEE** during this time period and the value of the **BENEFIT** to the **EMPLOYEE**.

☒ 211.2 Do you contend that the **EMPLOYEE** has not made reasonable efforts to minimize the amount of the **EMPLOYEE'S** lost income? If so:

- (a) describe what more **EMPLOYEE** should have done;
- (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts that support your contention; and
- (c) identify all **DOCUMENTS** that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

☐ 211.3 Do you contend that any of the lost income claimed by the **EMPLOYEE**, as disclosed in discovery thus far in this case, is unreasonable or was not caused by the **ADVERSE EMPLOYMENT ACTION**? If so:

- (a) state the amount of claimed lost income that you dispute;
- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
- (d) identify all **DOCUMENTS** that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

212.0 Physical, Mental, or Emotional Injuries—Interrogatories to Employee

☐ 212.1 Do you attribute any physical, mental, or emotional injuries to the **ADVERSE EMPLOYMENT ACTION**? (If your answer is "no," do not answer Interrogatories 212.2 through 212.7.)

☐ 212.2 Identify each physical, mental, or emotional injury that you attribute to the **ADVERSE EMPLOYMENT ACTION** and the area of your body affected.

☐ 212.3 Do you still have any complaints of physical, mental, or emotional injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each complaint state:

- (a) a description of the injury;
- (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
- (c) the frequency and duration.

☐ 212.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure section 2034) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each **HEALTH CARE PROVIDER** state:

- (a) the name, **ADDRESS**, and telephone number;
- (b) the type of consultation, examination, or treatment provided;
- (c) the dates you received consultation, examination, or treatment; and
- (d) the charges to date.

☐ 212.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each medication state:

- (a) the name of the medication;
- (b) the name, **ADDRESS** and telephone number of the **PERSON** who prescribed or furnished it;
- (c) the date prescribed or furnished;
- (d) the dates you began and stopped taking it; and
- (e) the cost to date.

☐ 212.6 Are there any other medical services not previously listed in response to Interrogatory 212.4 (for example, ambulance, nursing, prosthetics) that you received for injuries attributed to the **ADVERSE EMPLOYMENT ACTION**? If so, for each service state:

- (a) the nature;
- (b) the date;
- (c) the cost; and
- (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**.

- ☐ 212.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each injury state:
- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
 - (b) the complaints for which the treatment was advised; and
 - (c) the nature, duration, and estimated cost of the treatment.

213.0 Other Damages—Interrogatories to Employee

- ☐ 213.1 Are there any other damages that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each item of damage state:
- (a) the nature;
 - (b) the date it occurred;
 - (c) the amount; and
 - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the nature or amount of the damage.
- ☐ 213.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in Interrogatory 213.1? If so, identify the **DOCUMENTS** and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

214.0 Insurance

- ☒ 214.1 At the time of the **ADVERSE EMPLOYMENT ACTION**, was there in effect any policy of insurance through which you were or might be insured in any manner for the damages, claims, or actions that have arisen out of the **ADVERSE EMPLOYMENT ACTION**? If so, for each policy state:
- (a) the kind of coverage;
 - (b) the name and **ADDRESS** of the insurance company;
 - (c) the name, **ADDRESS**, and telephone number of each named insured;
 - (d) the policy number;
 - (e) the limits of coverage for each type of coverage contained in the policy;
 - (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
 - (g) the name, **ADDRESS**, and telephone number of the custodian of the policy.
- ☐ 214.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **ADVERSE EMPLOYMENT ACTION**? If so, specify the statute.

215.0 Investigation

- ☒ 215.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **ADVERSE EMPLOYMENT ACTION**? If so, for each individual state:
- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
 - (b) the date of the interview; and
 - (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.
- ☒ 215.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **ADVERSE EMPLOYMENT ACTION**? If so, for each statement state:
- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
 - (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
 - (c) the date the statement was obtained; and
 - (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

216.0 Denials and Special or Affirmative Defenses

- ☒ 216.1 Identify each denial of a material allegation and each special or affirmative defense in your **PLEADINGS** and for each:
- (a) state all facts upon which you base the denial or special or affirmative defense;
 - (b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - (c) identify all **DOCUMENTS** and all other tangible things, that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

217.0 Response to Request for Admissions

- ☒ 217.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- (a) state the number of the request;
 - (b) state all facts upon which you base your response;
 - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - (d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

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I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DOCUMENT SERVED : PLAINTIFF'S FORM INTERROGATORIES-
EMPLOYMENT LAW, SET ONE, TO DEFENDANT

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to Christopher Brizzolara, Esq. at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on November 11, 2009.

Selma I. Francia

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

EXHIBIT "D"

1 GREGORY W. SMITH (SBN 134385)
2 **LAW OFFICES OF GREGORY W. SMITH**
3 6300 Canoga Avenue, Suite 1590
4 Woodland Hills, California 91367
5 Telephone: (818) 712-4000
6 (213) 385-3400
7 Telecopier: (818) 712-4004

8 CHRISTOPHER BRIZZOLARA (SBN 130304)
9 1528 16th Street
10 Santa Monica, California 90404
11 Telephone: (310) 394-6447
12 Telecopier: (310) 656-7701

13 Attorneys for Plaintiff
14 WILLIAM TAYLOR

15 **UNLIMITED JURISDICTION**
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF LOS ANGELES**

18 WILLIAM TAYLOR,

19 Plaintiff,

20 vs.

21 CITY OF BURBANK and DOES 1 through
22 100, inclusive,

23 Defendants.

24 **CASE NO. BC 422 252**

25 **[Assigned to Terry A. Green, Judge,
26 Dept. 14]**

27 **PLAINTIFF'S REQUEST FOR
28 PRODUCTION OF DOCUMENTS AND
TANGIBLE THINGS PROPOUNDED TO
DEFENDANT CITY OF BURBANK, SET
NO. ONE**

Action Filed: September 22, 2009

29 **PROPOUNDING PARTY :** Plaintiff WILLIAM TAYLOR

30 **RESPONDING PARTY :** Defendant CITY OF BURBANK

31 **SET :** One (1)

32 **PLEASE TAKE NOTICE** that, pursuant to section 2031.010 of the California Code
33 of Civil Procedure, ("Section 2031"), Plaintiff William Taylor hereby requests Defendant
34 City of Burbank ("Defendant"), produce for inspection and copying the documents and
35 things ("Requests") described below which are in the possession, custody and/or control

1 of Defendant. The time for production shall be at 10:00 a.m. on December 16, 2009 and
2 continuing so long thereafter as reasonably required. The place for production shall be at
3 the Law Offices of Gregory W. Smith, located at 6300 Canoga Avenue, Suite 1590,
4 Woodland Hills, California 91367. In addition to its production obligations, pursuant to
5 Section 2031, Defendant must also serve a separate and individual response to the
6 Requests, fully, under oath within thirty (30 days) after service hereof in the manner
7 prescribed by Section 2031.260.

8 INSTRUCTIONS

9 A. Privileged Information

10 If any document is withheld under a claim of privilege or other protection, so as to
11 aid the court and the parties hereto to determine the validity of the claim of privilege or
12 other protection, please provide the following information with respect to any such
13 document:

14 1. The identity of the person(s) who prepared the document, who signed it, and
15 over whose name it was sent or issued;

16 2. The identity of the person(s) to whom the document was directed;

17 3. The nature and substance of the document with sufficient particularity to
18 enable the Court and parties hereto to identify the document;

19 4. The date of the document;

20 5. The identity of the person(s) having custody of or control over the document
21 and each copy thereof;

22 6. The identity of each person to whom copies of the document were furnished;

23 7. The number of pages;

24 8. The basis on which any privilege or other protection is claimed; and

25 9. Whether any non-privileged or non-protected matter is included in the
26 document.

27 B. Partial Production.

28 Whenever you object to a particular demand, or portion thereof, you must produce

1 all documents called for which are not subject to the objection. Similarly, wherever a
2 document is not produced in full, please state with particularity the reason or reasons it is
3 not being produced in full, and describe, to the best of your knowledge, information and
4 belief and with as much particularity as possible, those portions of the document which
5 are not produced.

6 C. Orderly Response.

7 Wherever it is reasonably practicable, please produce documents in such a manner
8 as will facilitate their identification with the particular demand or category of demands to
9 which they are responsive.

10 D. Construction of "And" and "Or."

11 As used herein, the words "and" and "or" shall be construed both conjunctive and
12 disjunctively, and each shall include the other wherever such dual construction will serve
13 to bring within the scope of this Demand any document which would otherwise not be
14 brought within its scope.

15 E. Construction of the Singular and Plural Forms.

16 As used herein, the singular form shall include the plural and vice versa wherever
17 such dual construction will serve to bring within the scope of this Demand any document
18 which would otherwise not be brought within its scope.

19 F. Pursuant to C.C.P. 2031.280, each document and/or thing produced in
20 response hereto shall either be produced as it is kept in the usual course of business,
21 including all file folders, binders, notebooks and other devices by which such papers or
22 things may be organized or separated, or shall be organized and labeled to correspond
23 with the categories of the demand in response to which it is being produced.

24 **DEFINITIONS**

25 1. The term "YOU," "YOUR," or "DEFENDANT" refers to Defendant City of
26 Burbank.

27 2. The term "PLAINTIFF" refers to Plaintiff William Taylor.

28 3. The term "DOCUMENT" or "DOCUMENTS" shall mean and include any

1 writing within the meaning and scope of California Evidence Code section 250 including,
2 without limitation, any written, recorded or graphic matter, whether produced, reproduced
3 or stored on paper, cards, tape, film, electronic facsimile, computer storage devices,
4 memories, data cells or other media or data compilation from which information can be
5 obtained, including originals, copies (with or without notes or changes thereon) and drafts,
6 and includes, but is not limited to, papers, books, letters, tangible things, correspondence,
7 telegrams, cables, telex messages, memoranda, notes, notations, work papers,
8 transcripts, minutes, reports, recordings of telephone conversations, interviews,
9 conferences or other meetings, affidavits, statements, summaries, options, reports,
10 studies, analyses, evaluations, appraisals, estimates, projections, charts, schedules, work
11 sheets, proposals, contracts, agreements, statistical records, desk calendars, appointment
12 books, diaries, lists, tabulations, sound recordings, computer print-outs, data processing
13 output and input, microfilms, phonographs or negatives thereof, all other records kept by
14 electronic, photographic or mechanical means, and any or all matter or material attached
15 or affixed to any of the above.

18 4. As used herein, "PERTAIN TO" shall mean referring to, relating to,
19 evidencing, demonstrating, supporting, or otherwise having any relation to the specific
20 item or topic.

21 5. As used herein, "FRINGE BENEFITS" shall mean compensation
22 due an employee pursuant to an agreement or company policy for holiday, time off for
23 sickness or injury, time off for personal reasons or vacation, bonuses, authorized
24 expenses incurred during the course of employment, and contributions made on behalf of
25 an employee.

26 6. As used herein, the term "COMPLAINT" shall mean the complaint filed herein
27 by PLAINTIFF against DEFENDANT, Case No. BC 422 252.

28 7. As used herein, the term "LAWSUIT" shall mean an action brought in a

1 court for the purpose of seeking relief from or remedy for an alleged wrong.

2 8. ADVERSE EMPLOYMENT ACTION means any TERMINATION,
3 suspension, demotion, reprimand, transfer, loss of pay, failure or refusal to hire, failure or
4 refusal to promote, or other action or failure to act that adversely affects the EMPLOYEE'S
5 rights or interests and which is alleged in the PLEADINGS.

6 **SPECIFIC REQUEST**

7
8 **REQUEST NO. 1:**

9 All DOCUMENTS which evidence, refer or relate to any communications between
10 Plaintiff and any member of the Burbank Police Department.

11 **REQUEST NO. 2:**

12 All DOCUMENTS which evidence, refer or relate to the demotion of plaintiff from
13 the rank of Deputy Chief to Captain.

14 **REQUEST NO. 3:**

15 The entire contents of the personnel file of Capt. William Taylor.

16 **REQUEST NO. 4:**

17 Any DOCUMENTS which evidence, refer or relate to any complaints made by
18 Plaintiff to any employee of the city of Burbank.

19 **REQUEST NO. 5:**

20 Any DOCUMENTS which evidence, refer or relate to any of the affirmative
21 defenses stated in Defendant, City of Burbank's Answer to Plaintiff's operative Complaint
22 for Damages filed in this case.


23 **REQUEST NO. 6:**

24 Any DOCUMENTS which evidence, refer or relate to any information that the city of
25 Burbank has that contradicts the claims made by plaintiff in his lawsuit for retaliation in
26 violation of FEHA and Labor Code section 1102.5.
27
28

1 Dated: November 11, 2009

LAW OFFICES OF GREGORY W. SMITH

2
3 By:



GREGORY W. SMITH
Attorneys for Plaintiff
WILLIAM TAYLOR

[illegible]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

DATE OF SERVICE : November 11, 2009

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to Christopher Brizzolara, Esq. at the following e-mail address: samorai@adelphia.net.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Selma L. Francia

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

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Burke Williams & Sorenson LLP
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Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
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Burbank, California 91510

EXHIBIT "E"

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3 275 East Olive Avenue
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5 KRISTIN A. PELLETIER (SBN 155378)
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ROBERT J. TYSON (SBN 187311)
7 E-mail: rtyson@bwsllaw.com
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8 444 S. Flower Street, 24th Floor
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9 Tel: 213-236-0600 Fax: 213-236-2700

10 Attorneys for Defendant
City of Burbank

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 WILLIAM TAYLOR,
16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1
19 through 100, inclusive,,
20 Defendants.

Case No. BC 422252

DEFENDANT CITY OF BURBANK'S
RESPONSE TO PLAINTIFF'S FIRST SET OF
SPECIAL INTERROGATORIES

21
22 PROPOUNDING PARTY: Plaintiff William Taylor
23 RESPONDING PARTY: Defendant City of Burbank
24 SET NO.: One

25 Pursuant to Code of Civil Procedure Section 2030.010-2030.060, defendant City of
26 Burbank hereby responds to plaintiff's first set of special interrogatories as follows:

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1 City objects to each and every interrogatory to the extent that plaintiff seeks information
2 which is privileged, constitutes work-product, or is otherwise immune from discovery. The
3 inadvertent production of any information or document which is privileged, which was prepared
4 in anticipation of litigation or for trial, which otherwise constitutes work-product, or which is
5 otherwise immune from discovery shall not constitute a waiver of any privilege or any other
6 ground for objecting to discovery with respect to such information or such document or any other
7 document, or the subject matter thereof, or the information contained therein, or of City's right to
8 object to the use of any such information or the information contained therein.

9 City objects to these interrogatories as they are overly burdensome and cumulative and the
10 information could be obtained more efficiently by other methods.

11 **RESPONSES TO SPECIAL INTERROGATORIES**

12 **INTERROGATORY NO. 1:**

13 State each and every reason for the demotion of Plaintiff from the rank of Deputy Chief to
14 Captain.

15 **RESPONSE TO INTERROGATORY NO. 1:**

16 City objects to this interrogatory on the ground that it is misleading and that it assumes
17 facts not in evidence, as plaintiff was not "demoted" to Captain. Notwithstanding, but subject to
18 this objection, City responds as follows on information and belief:

19 Plaintiff was not demoted from Deputy Chief to Captain. At all relevant times, plaintiff
20 has held the position of Captain. There is no Deputy Chief position or classification in the
21 Burbank Police Department. The Chief of Police has been authorized to designate one of his
22 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
23 served in that assigned capacity from approximately August 2007 until approximately May 2009.
24 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
25 oversight of the Department's operations and to train and mentor new Captains. This assignment
26 was created under a previous administration.

27 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
28 did not believe that there was a pressing need for the role of the Captain serving in the capacity of

1 Deputy Chief, and he wanted to have more direct control and contact within the Department.
2 Therefore, he eliminated the assignment of having a Captain serve in the capacity of Deputy
3 Police Chief and re-assigned plaintiff as the Captain in command of the Investigations Division.

4 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
5 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
6 most serious contributing factor was that Chief Stehr had received allegations of impropriety
7 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
8 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
9 oversaw internal affairs investigations conducted by the Department, which oversight was not
10 appropriate given the allegations against plaintiff.

11 **INTERROGATORY NO. 2:**

12 Identify each and every witness that has knowledge for the reasons of the demotion of
13 Plaintiff from the rank of Deputy Chief to Captain.

14 **RESPONSE TO INTERROGATORY NO. 2:**

15 City objects to this interrogatory on the ground that it is misleading and that it assumes
16 facts not in evidence as plaintiff was not demoted to Captain. City further objects to this
17 interrogatory on the ground that it seeks information protected from disclosure under Penal Code
18 § 832.7 and Evidence Code § 1043. Notwithstanding, but subject to this objection, City responds
19 as follows on information and belief:

20 The following witnesses were aware of the reasons for he restructuring: Plaintiff, Chief of
21 Police Tim Stehr and his Command Staff, all members of the Department who received the
22 Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, and City Manager Mike Flad.
23 Witness information gathered or generated during the investigation into alleged improprieties by
24 plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
25 when and if they are discoverable.

26 **INTERROGATORY NO. 3:**

27 Identify each and every DOCUMENT that refers or relates in any way to the demotion of
28 Plaintiff from the rank of Deputy Chief to Captain.

1 **RESPONSE TO INTERROGATORY NO. 3:**

2 City objects to this interrogatory on the ground that it is misleading and that it assumes
3 facts not in evidence, as plaintiff was not demoted to Captain. City further objects to this
4 interrogatory on the ground that it seeks information protected from disclosure under Penal Code
5 § 832.7 and Evidence Code §1043. In addition, City objects to this interrogatory to the extent this
6 request seeks documents protected by the attorney-client privilege or attorney work-product
7 doctrine. Notwithstanding, but subject to this objection, City responds as follows on information
8 and belief:

9 The following documents relate to the restructuring: May 14, 2009 letter from Juli C.
10 Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
11 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
12 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
13 documents. Documents gathered or generated during the investigation into alleged improprieties
14 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
15 when and if they are discoverable.

16 **INTERROGATORY NO. 4:**

17 What, if any information, did city manager Mike Flad have concerning the demotion of
18 Plaintiff from the rank of Deputy Chief ?

19 **RESPONSE TO INTERROGATORY NO. 4:**

20 City objects to this interrogatory on the ground that it is misleading and that it assumes
21 facts not in evidence, as plaintiff was not demoted to Captain. City further objects to this request
22 on the ground that it is vague and ambiguous as to the kind of information, and vague and
23 ambiguous as to time regarding when he had "any" information. Notwithstanding, but subject to
24 this objection, City responds as follows on information and belief:

25 Chief Stehr advised the City Manager that he was considering eliminating the Deputy
26 Chief assignment and his reasoning therefore and kept him in the loop as he considered and
27 ultimately decided to do so.

1 **INTERROGATORY NO. 5:**

2 Did Plaintiff ever make a complaint to any employee, including the city manager, of the
3 city of Burbank, regarding racial discrimination?

4 **RESPONSE TO INTERROGATORY NO. 5:**

5 City objects to this interrogatory as vague and ambiguous and overbroad and misleading
6 as to the nature of "a complaint." City further objects as misleading and overbroad and unduly
7 burdensome in suggesting that plaintiff, a police Captain, could have and/or might have made a
8 discrimination complaint to *any* employee in the City. It would take the City at least several
9 weeks to inquire with every employee of the City to respond to the interrogatory as phrased.
10 Notwithstanding, but subject to this objection, City responds as follows on information and
11 belief:

12 City has not been able to find any information to suggest that plaintiff complained to any
13 supervisory or human resources employee about racial discrimination in the City as alleged in
14 plaintiff's Complaint, and City has not been advised that plaintiff made a complaint to any City
15 employee regarding race discrimination.

16 **INTERROGATORY NO. 6:**

17 If the answer to interrogatory number 5 is yes, please state the contents of each complaint.

18 **RESPONSE TO INTERROGATORY NO. 6:**

19 City objects to this interrogatory as vague and ambiguous and overbroad and misleading
20 as to the nature of "a complaint." City further objects as misleading and overbroad and unduly
21 burdensome in suggesting that plaintiff, a police Captain, could have and/or might have made a
22 discrimination complaint to *any* employee in the City. It would take the City at least several
23 weeks to inquire with every employee of the City to respond to the interrogatory as phrased.
24 Notwithstanding, but subject to this objection, City responds as follows on information and
25 belief:

26 Not applicable.

27 **INTERROGATORY NO. 7:**

28 If the answer to interrogatory number 5 is yes, please state the names of any witnesses to

1 each complaint.

2 **RESPONSE TO INTERROGATORY NO. 7:**

3 City objects to this interrogatory as vague and ambiguous and overbroad and misleading
4 as to the nature of "a complaint." City further objects as misleading and overbroad and unduly
5 burdensome in suggesting that plaintiff, a police Captain, could have and/or might have made a
6 discrimination complaint to *any* employee in the City. It would take the City at least several
7 weeks to inquire with every employee of the City to respond to the interrogatory as phrased.
8 Notwithstanding, but subject to this objection, City responds as follows on information and
9 belief:

10 Not applicable.

11 **INTERROGATORY NO. 8:**

12 If the answer to interrogatory number 5 is yes, please identify any DOCUMENTS that
13 refer to each complaint.

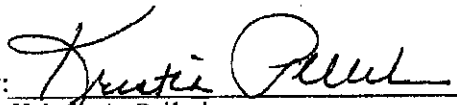
14 **RESPONSE TO INTERROGATORY NO. 8:**

15 City objects to this interrogatory as vague and ambiguous and overbroad and misleading
16 as to the nature of "a complaint." City further objects as misleading and overbroad and unduly
17 burdensome in suggesting that plaintiff, a police Captain, could have and/or might have made a
18 discrimination complaint to *any* employee in the City. It would take the City at least several
19 weeks to inquire with every employee of the City to respond to the interrogatory as phrased.
20 Notwithstanding, but subject to this objection, City responds as follows on information and
21 belief:

22 Not applicable.

23 Dated: January 15, 2010

Burke, Williams & Sorensen, LLP

24
25 By: 
26 Kristin A. Pelletier.
27 Attorneys for Defendant
28 City of Burbank

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DEFENDANT CITY OF BURBANK'S RESPONSE TO
PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES

Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Ave., Suite 1590
Woodland Hill, CA 91367
Fax: (818) 712-4004

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

Executed on January 15, 2010, at Los Angeles, California.

Alice Cheung

1 VERIFICATION

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

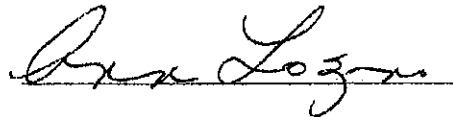
4 I have read the foregoing **DEFENDANT CITY OF BURBANK'S RESPONSE TO**
5 **PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES.**

6 I am an employee of the City of Burbank, a party to this action, and am authorized to
7 make this verification for and on its behalf, and I make this verification for that reason. The
8 information contained in these responses is compiled from city sources and the responses are
9 based on information and belief.

10 I declare under penalty perjury under the laws of the State of CALIFORNIA that the
11 foregoing is true and correct.

12 Executed this 2nd day of January, 2010 at Burbank California.

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Ann Lozano

EXHIBIT "F"

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8 444 S. Flower Street, 24th Floor
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9 Tel: 213-236-0600 Fax: 213-236-2700

10 Attorneys for Defendant
City of Burbank

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

15 WILLIAM TAYLOR,
16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1
19 through 100, inclusive,,
20 Defendants.

Case No. BC 422252

DEFENDANT CITY OF BURBANK'S
RESPONSE TO PLAINTIFF'S FORM
INTERROGATORIES, SET ONE

22 PROPOUNDING PARTY: Plaintiff William Taylor
23 RESPONDING PARTY: Defendant City of Burbank
24 SET NO.: One

25 Pursuant to Code of Civil Procedure Section 2030.010-2030.060, defendant City of
26 Burbank ("City") hereby responds to plaintiff's form interrogatories, set one, as follows:

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1 City objects to each and every interrogatory to the extent that plaintiff seeks information
2 which is privileged, constitutes work-product, or is otherwise immune from discovery. The
3 inadvertent production of any information or document which is privileged, which was prepared
4 in anticipation of litigation or for trial, which otherwise constitutes work-product, or which is
5 otherwise immune from discovery shall not constitute a waiver of any privilege or any other
6 ground for objecting to discovery with respect to such information or such document or any other
7 document, or the subject matter thereof, or the information contained therein, or of City's right to
8 object to the use of any such information or the information contained therein.

9 City objects to these interrogatories as they are overly burdensome and cumulative and the
10 information could be obtained more efficiently by other methods.

11 **RESPONSES TO FORM INTERROGATORIES**

12 **FORM INTERROGATORY NO. 200.4:**

13 Was any part of the parties' EMPLOYMENT relationship governed in whole or in part by
14 any written rules, guidelines, policies, or procedures established by the EMPLOYER? If so, for
15 each DOCUMENT containing the written rules, guidelines, policies, or procedures:

- 16 (a) state the date and title of the DOCUMENT and a general description of its
17 contents;
18 (b) state the manner in which the DOCUMENT was communicated to employees; and
19 (c) state the manner, if any, in which employees acknowledged either receipt of the
20 DOCUMENT or knowledge of its contents.

21 **RESPONSE TO FORM INTERROGATORY NO. 200.4:**

22 City objects to this request on the ground that it is vague as to time, and is irrelevant and
23 not reasonably calculated to lead to the discovery of admissible evidence. City further objects to
24 the extent that this interrogatory asks the City identify witnesses or documents as to a legal
25 contention instead of a factual one. Notwithstanding and subject to the foregoing objections, City
26 responds as follows on information and belief:

- 27 (a-c) Plaintiff's employment was subject to state law and to the ordinances, rules,
28 regulations, policies and procedures of the City of Burbank including the City's personnel rules

LA #4835-3629-8245 v2

1 and regulations

2 **FORM INTERROGATORY NO. 200.5:**

3 Was any part of the parties' EMPLOYMENT relationship covered by one or more
4 collective bargaining agreements or memorandums of understanding between the EMPLOYER
5 (or an association of employers) and any labor union or employee association? If so, for each
6 collective bargaining agreement or memorandum of understanding, state:

7 (a) the names and ADDRESSES of the parties to the collective bargaining agreement
8 or memorandum of understanding;

9 (b) the beginning and ending dates, if applicable, of the collective bargaining
10 agreement or memorandum of understanding; and

11 (c) which parts of the collective bargaining agreement or memorandum of
12 understanding, if any, govern (1) any dispute or claim referred to in the PLEADINGS and (2) the
13 rules or procedures for resolving any dispute or claim referred to in the PLEADINGS.

14 **RESPONSE TO FORM INTERROGATORY NO. 200.5:**

15 City responds as follows on information and belief:

16 No. Not at any time relevant to this action.

17 **FORM INTERROGATORY NO. 201.3:**

18 Were there any other ADVERSE EMPLOYMENT ACTIONS, including (*the asking*
19 *party should list the ADVERSE EMPLOYMENT ACTIONS*): Demotion to Captain. If so, for
20 each action, provide the following:

21 (a) all reasons for each ADVERSE EMPLOYMENT ACTION;

22 (b) the name, ADDRESS, and telephone number of each PERSON who participated in
23 making each ADVERSE EMPLOYMENT ACTION decision;

24 (c) the name, ADDRESS, and telephone number of each PERSON who provided any
25 information relied upon in making each ADVERSE EMPLOYMENT ACTION decision; and

26 (d) the identify of all DOCUMENTS relied upon in making each ADVERSE
27 EMPLOYMENT ACTION decision.

1 **RESPONSE TO FORM INTERROGATORY NO. 201.3:**

2 City objects to this interrogatory on the grounds that it is misleading and assumes facts in
3 listing a "demotion to Captain," as at all relevant times, plaintiff was a Captain with the Burbank
4 Police Department and was never demoted to that rank. Moreover, to the extent that plaintiff
5 intends to refer to the elimination of the assignment for a Captain to serve in the capacity of a
6 Deputy Chief, City objects that this is a misleading use of a special definition of the phrase
7 "ADVERSE EMPLOYMENT ACTION" that conflicts with the legal definition of that term.
8 City further objects to this interrogatory to the extent it calls for information which is privileged
9 or otherwise protected from disclosure by *Penal Code* § 832.7 and *Evidence Code* § 1043.
10 Notwithstanding, but subject to the foregoing objections, City responds as follows on information
11 and belief:

12 No. There was no Adverse Employment Action against plaintiff, nor was plaintiff
13 demoted to Captain.

14 To the extent that this interrogatory is intended to simply ask about the elimination of the
15 assignment for a Captain to serve in the capacity of Deputy Chief, City responds as follows:

16 (a-b) Plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
17 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
18 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
19 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
20 served in that assigned capacity from approximately August 2007 until approximately May 2009.
21 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
22 oversight of the Department's operations and to train and mentor new Captains. This assignment
23 was created under a previous administration.

24 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
25 did not believe that there was a pressing need for the role of the Captain serving in the capacity of
26 Deputy Chief, and he wanted to have more direct control and contact within the Department.
27 Therefore, he eliminated the assignment of having a Captain serve in the capacity of Deputy
28 Police Chief and re-assigned plaintiff as the Captain in command of the Investigations Division.

1 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
2 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
3 most serious contributing factor was that Chief Stehr had received allegations of impropriety
4 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
5 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
6 oversaw internal affairs investigations conducted by the Department, which oversight was not
7 appropriate given the allegations against plaintiff.

8 (c) The following witnesses were aware of the reasons for the restructuring: Plaintiff,
9 Chief of Police Tim Stehr and his Command Staff, all members of the Department who received
10 the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, City Manager Mike Flad.
11 Witness information gathered or generated during the investigation into alleged improprieties by
12 plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
13 when and if they are discoverable.

14 (d) The following documents relate to the restructuring: May 14, 2009 letter from Juli
15 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
16 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
17 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
18 documents. Documents gathered or generated during the investigation into alleged improprieties
19 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
20 when and if they are discoverable.

21 **FORM INTERROGATORY NO. 201.4:**

22 Was the TERMINATION or any other ADVERSE EMPLOYMENT ACTIONS referred
23 to in Interrogatories 201.1 through 201.3 based in whole or in part on the EMPLOYEE'S job
24 performance? If so, for each action:

25 (a) identify the ADVERSE EMPLOYMENT ACTION;

26 (b) identify the EMPLOYEE'S specific job performance that played a role in that
27 ADVERSE EMPLOYMENT ACTION;

28 (c) identify any rules, guidelines, policies, or procedures that were used to evaluate the

1 EMPLOYEE'S specific job performance;

2 (d) state the names, ADDRESSES, and telephone numbers of all PERSONS who had
3 responsibility for evaluating the specific job performance of the EMPLOYEE;

4 (e) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
5 knowledge of the EMPLOYEE'S specific job performance that played a role in that ADVERSE
6 EMPLOYMENT ACTION; and

7 (f) describe all warnings given with respect to the EMPLOYEE'S specific job
8 performance.

9 **RESPONSE TO FORM INTERROGATORY NO. 201.4:**

10 City objects to this interrogatory on the grounds that it is misleading and assumes facts in
11 listing a "demotion to Captain" as at all relevant times, plaintiff was a Captain with the Burbank
12 Police Department, and was never demoted to that rank. Moreover, to the extent that plaintiff
13 intends to refer to the elimination of the assignment for a Captain to serve in the capacity of a
14 Deputy Chief, City objects that this is a misleading use of a special definition of the phrase
15 "ADVERSE EMPLOYMENT ACTION" that conflicts with the legal definition of that term.

16 Notwithstanding, but subject to the foregoing, City responds as follows on information and belief:

17 There was no Adverse Employment Action against plaintiff, nor was plaintiff demoted to
18 Captain.

19 To the extent that this interrogatory is intended to simply ask about the elimination of the
20 assignment for a Captain to serve in the capacity of Deputy Chief, City responds as follows:

21 (a) There was no adverse employment action.

22 (b) In May 2009, Chief of Police Tim Stehr decided to restructure the Police
23 Department. He did not believe that there was a pressing need for the role of the Captain serving
24 in the capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control and contact
25 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
26 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the
27 Investigations Division.

28 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in

1 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
2 most serious contributing factor was that Chief Stehr had received allegations of impropriety
3 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
4 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
5 oversaw internal affairs investigations conducted by the Department, which oversight was not
6 appropriate given the allegations against plaintiff.

7 (c) City personnel rules, administrative rules and regulations, civil service rules,
8 Municipal Code, and resolutions pertaining to wages and compensation.

9 (d) Tim Stehr.

10 (e) The following witnesses were aware of the reasons for the restructuring: Plaintiff,
11 Chief of Police Tim Stehr and his Command Staff, all members of the Department who received
12 the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons, City Manager Mike Flad.
13 Witness information gathered or generated during the investigation into alleged improprieties by
14 plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
15 when and if they are discoverable.

16 (f) The following documents relate to the restructuring: May 14, 2009 letter from Juli
17 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
18 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
19 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
20 documents. Documents gathered or generated during the investigation into alleged improprieties
21 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
22 when and if they are discoverable.

23 **FORM INTERROGATORY NO. 201.5:**

24 Was any PERSON hired to replace the EMPLOYEE after the EMPLOYEE'S
25 TERMINATION or demotion? If so, state the PERSON'S name, job title, qualifications,
26 ADDRESS and telephone number, and the date the PERSON was hired.

27 **RESPONSE TO FORM INTERROGATORY NO. 201.5:**

28 City objects to this interrogatory on the grounds that it is misleading and assumes facts in

1 listing a "demotion" as plaintiff was not demoted. City further objects that the portion of this
2 interrogatory requesting personal information of other employees violates *Penal Code* § 832.7
3 and *Evidence Code* §1043. Notwithstanding, but subject to the foregoing, and to the extent that
4 this interrogatory is intended to ask about the elimination of the assignment for a Captain to serve
5 in the capacity of Deputy Chief, City responds as follows on information and belief:

6 No.

7 **FORM INTERROGATORY NO. 201.6:**

8 Has any PERSON performed any of the EMPLOYEE'S former job duties after the
9 EMPLOYEE'S TERMINATION or demotion? If so:

- 10 (a) state the PERSONS'S name, job title, ADDRESS, and telephone number;
11 (b) identify the duties; and
12 (c) state the date on which the PERSON started to perform the duties.

13 **RESPONSE TO FORM INTERROGATORY NO. 201.6:**

14 City objects to this interrogatory on the grounds that it is misleading and assumes facts in
15 listing a "demotion" as plaintiff was not demoted. City further objects that the portion of this
16 interrogatory requesting personal information of other City employees violates *Penal Code* §
17 832.7 and *Evidence Code* §1043. Notwithstanding, but subject to the foregoing, and to the extent
18 that this interrogatory is intended to ask about the elimination of the assignment for a Captain to
19 serve in the capacity of Deputy Chief, City responds as follows on information and belief:

20 Chief of Police Stehr took on much of the supervision of the day to day operations of the
21 Burbank Police Department, including oversight of the Captains and direct chain of command
22 until his retirement in 2009. In the restructuring, plaintiff became the investigation division
23 captain, Craig Varner became the administrative captain, Janice Lowers became the special
24 operation divisions captain, and Pat Lynch became the patrol division captain..

25 **FORM INTERROGATORY NO. 207.1:**

26 Were there any internal written policies or regulations of the EMPLOYER that apply to
27 the making of a complaint of the type that is the subject matter of this lawsuit? If so:

- 28 (a) state the title and date of each DOCUMENT containing the policies or regulations

1 and a general description of the DOCUMENT'S contents;

2 (b) state the manner in which the DOCUMENT was communicated to EMPLOYEES;

3 (c) state the manner, if any, in which EMPLOYEES acknowledged receipt of the
4 DOCUMENT or knowledge of its contents, or both;

5 (d) state, if you contend that the EMPLOYEE failed to use any available internal
6 complaint procedures, all facts that support that contention; and

7 (e) state, if you contend that the EMPLOYEE'S failure to use internal complaint
8 procedures was excused, all facts why the EMPLOYEE'S use of the procedures was excused.

9 **RESPONSE TO FORM INTERROGATORY NO. 207.1:**

10 City objects to this interrogatory on the ground that it is vague and ambiguous, and seeks
11 information that is neither relevant to the subject matter of this action nor reasonable calculated to
12 lead to the discovery of admissible evidence, as plaintiff did not file any discrimination or
13 retaliation complaints. Notwithstanding, but subject to the foregoing, City responds as follows on
14 information and belief;

15 The City's administrative regulations contain a reporting, response, and investigative
16 procedure for complaints of illegal employment discrimination, of which plaintiff did not avail
17 himself (and in which plaintiff refused to participate after the City received notice of his
18 Complaint herein).

19 **FORM INTERROGATORY NO. 207.2:**

20 Did the EMPLOYEE complain to the EMPLOYER about any of the unlawful conduct
21 alleged in the PLEADINGS? If so, for each complaint:

22 (a) state the date of the complaint;

23 (b) state the nature of the complaint;

24 (c) state the name and ADDRESS of each PERSON to whom the complaint was
25 made;

26 (d) state the name, ADDRESS, telephone number, and job title of each PERSON who
27 investigated the complaint;

28 (e) state the name, ADDRESS, telephone number, and job title of each PERSON who

1 participated in making decisions about how to conduct the investigation;

2 (f) state the name, ADDRESS, telephone number, and job title of each PERSON who
3 was interviewed or who provided an oral or written statement as part of the investigation of the
4 complaint;

5 (g) state the nature and date of any action taken in response to the complaint;

6 (h) state whether the EMPLOYEE who made the complaint was made aware of the
7 actions taken by the EMPLOYER in response to the complaint, and if, if so, state how and when;

8 (i) identify all DOCUMENTS relating to the complaint, the investigation, and any
9 action taken in response to the complaint; and

10 (j) state the name, ADDRESS, and telephone number of each PERSON who has
11 knowledge of the EMPLOYEE'S complaint or the EMPLOYER'S response to the complaint.

12 **RESPONSE TO FORM INTERROGATORY NO. 207.2:**

13 City objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad
14 and unduly burdensome as to the nature or scope of action that rises to the level of
15 "complain[ing]." City further objects that the portion of this interrogatory requesting personal
16 information of other employees violates *Penal Code* § 832.7 and *Evidence Code* §1043.
17 Notwithstanding, but subject to the foregoing objections, City responds as follows on information
18 and belief:

19 Assuming that this interrogatory refers to internal complaints rather than the tort claim
20 prepared and signed by plaintiff's counsel as the precursor to this lawsuit: No.

21 **FORM INTERROGATORY NO. 208.2:**

22 Did the EMPLOYER respond to any claim, complaint, or charge identified in
23 Interrogatory 208.1? If so, for each claim, complaint, or charge:

24 (a) state the nature and date of any investigation done or any other action taken by the
25 EMPLOYER in response to the claim, complaint, or charge;

26 (b) state the name, ADDRESS, telephone number, and job title of each person who
27 investigated the claim, complaint, or charge;

28 (c) state the name, ADDRESS, telephone number; and job title of each PERSON who

1 participated in making decisions about how to conduct the investigation; and

2 (d) state the name, ADDRESS, telephone number, and job title of each PERSON who
3 was interviewed or who provided an oral or written statement as part of the investigation.

4 **RESPONSE TO FORM INTERROGATORY NO. 208.2:**

5 City objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad
6 and unduly burdensome as to the nature or scope of action that rises to the level of
7 "complain[ing]." City further objects that the portion of this interrogatory requesting personal
8 information of other employees violates *Penal Code* § 832.7 and *Evidence Code* §1043.

9 Notwithstanding, but subject to the foregoing objections, City responds as follows on information
10 and belief:

11 Not applicable.

12 **FORM INTERROGATORY NO. 211.1:**

13 Identify each type of BENEFIT to which the EMPLOYEE would have been entitled, from
14 the date of the ADVERSE EMPLOYMENT ACTION to the present, if the ADVERSE
15 EMPLOYMENT ACTION had not happened and the EMPLOYEE had remained in the same job
16 position. For each type of benefit, state the amount the EMPLOYER would have paid to provide
17 the benefit for the EMPLOYEE during this time period and the value of the BENEFIT to the
18 EMPLOYEE.

19 **RESPONSE TO FORM INTERROGATORY NO. 211.1:**

20 City objects to this interrogatory on the grounds that it is misleading and assumes facts in
21 listing a "demotion to Captain" as at all relevant times, plaintiff was a Captain with the Burbank
22 Police Department, and was never demoted to that rank. Moreover, to the extent that plaintiff
23 intends to refer to the elimination of the assignment for a Captain to serve in the capacity of a
24 Deputy Chief, City objects that this is a misleading use of a special definition of the phrase
25 "ADVERSE EMPLOYMENT ACTION" that conflicts with the legal definition of that term.

26 Notwithstanding, but subject to the foregoing, City responds as follows on information and belief:

27 There was no Adverse Employment Action against plaintiff, nor was plaintiff demoted to
28 Captain.

1 To the extent that this interrogatory is intended to simply ask about the elimination of the
2 assignment for a Captain to serve in the capacity of Deputy Chief, City responds as follows:

3 A \$500 stipend for the Captain serving by assignment in the capacity the deputy chief was
4 eliminated from the Department's budget at the end of the 2008-2009 fiscal year.

5 **FORM INTERROGATORY NO. 211.2:**

6 Do you contend that the EMPLOYEE has not made reasonable efforts to minimize the
7 amount of the EMPLOYEE'S lost income? If so:

8 (a) describe what more EMPLOYEE should have done;

9 (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
10 knowledge of the facts that support your contention; and

11 (c) identify all DOCUMENTS that support your contention and state the name,
12 ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

13 **RESPONSE TO FORM INTERROGATORY NO. 211.2:**

14 City objects to this interrogatory on the ground that it is vague and ambiguous in the
15 context of this action, as plaintiff was not terminated from his employment and did not suffer an
16 adverse employment action. Notwithstanding, but subject to the foregoing, City responds as
17 follows on information and belief:

18 Not at this time. Discovery is continuing.

19 **FORM INTERROGATORY NO. 214.1:**

20 At the time of the ADVERSE EMPLOYMENT ACTION, was there in effect any policy
21 of insurance through which you were or might be insured in any manner for the damages, claims,
22 or actions that have arisen out of the ADVERSE EMPLOYMENT ACTION? If so, for each
23 policy state:

24 (a) the kind of coverage;

25 (b) the name and ADDRESS of the insurance company;

26 (c) the name, ADDRESS, and telephone number of each named insured;

27 (d) the policy number;

28 (e) the limits of coverage for each type of coverage contained in the policy;

1 (f) whether any reservation of rights or controversy or coverage dispute exists
2 between you and the insurance company; and

3 (g) the name, ADDRESS, and telephone number of the custodian of the policy.

4 **RESPONSE TO FORM INTERROGATORY NO. 214.1:**

5 To the extent that plaintiff intends to refer to the elimination of the assignment for a
6 Captain to serve in the capacity of a Deputy Chief, City objects that this is a misleading use of a
7 special definition of the phrase "ADVERSE EMPLOYMENT ACTION" that conflicts with the
8 legal definition of that term. Notwithstanding, but subject to the foregoing objections, and to the
9 extent this interrogatory is intended to refer to the elimination of the assignment for a Captain to
10 serve in the capacity of Deputy Chief, City responds as follows on information and belief:

11 No.

12 **FORM INTERROGATORY NO. 215.1:**

13 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual
14 concerning the ADVERSE EMPLOYMENT ACTION? If so, for each individual state:

15 (a) the name, ADDRESS, and telephone number of the individual interviewed;

16 (b) the date of the interview; and

17 (c) the name, ADDRESS, and telephone number of the PERSON who conducted the
18 interview.

19 **RESPONSE TO FORM INTERROGATORY NO. 215.1:**

20 To the extent that plaintiff intends to refer to the elimination of the assignment for a
21 Captain to serve in the capacity of a Deputy Chief, City objects that this is a misleading use of a
22 special definition of the phrase "ADVERSE EMPLOYMENT ACTION" that conflicts with the
23 legal definition of that term. City further objects to this interrogatory to the extent that it seeks
24 information protected by the attorney-client privilege, the attorney work product doctrine, or that
25 is privileged under *Evidence Code* § 1043 or *Penal Code* § 832.7. Notwithstanding, but subject
26 to the foregoing, and to the extent this interrogatory is intended to refer simply to the elimination
27 of the assignment for a Captain to serve in the capacity of Deputy Chief, City responds as follows
28 on information and belief:

1 The City did not conduct any non-privileged interviews.

2 **FORM INTERROGATORY NO. 215.2:**

3 Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded
4 statement from any individual concerning the ADVERSE EMPLOYMENT ACTION? If so, for
5 each statement state:

6 (a) the name, ADDRESS, and telephone number of the individual from whom the
7 statement was obtained;

8 (b) the name, ADDRESS, and telephone number of the individual who obtained the
9 statement;

10 (c) the date the statement was obtained; and

11 (d) the name, ADDRESS, and telephone number of each PERSON who has the
12 original statement or a copy.

13 **RESPONSE TO FORM INTERROGATORY NO. 215.2:**

14 To the extent that plaintiff intends to refer to the elimination of the assignment for a
15 Captain to serve in the capacity of a Deputy Chief, City objects that this is a misleading use of a
16 special definition of the phrase "ADVERSE EMPLOYMENT ACTION" that conflicts with the
17 legal definition of that term. City further objects to this interrogatory to the extent that it seeks
18 information protected by the attorney-client privilege, the attorney work product doctrine, or that
19 is privileged under *Evidence Code* § 1043 or *Penal Code* § 832.7. Notwithstanding, but subject
20 to the foregoing, and to the extent this interrogatory is intended to refer simply to the elimination
21 of the assignment for a Captain to serve in the capacity of Deputy Chief, City responds as follows
22 on information and belief:

23 Any statements obtained by the City pertain to a current, ongoing investigation and are
24 therefore not subject to discovery under *Evidence Code* § 1043 and *Penal Code* § 832.7.

25 **INTERROGATORY NO. 216.1:**

26 Identify each denial of a material allegation and each special or affirmative defense in
27 your PLEADINGS and for each:

28 (a) state all facts upon which you base the denial or special or affirmative defense;

1 (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
2 knowledge of those facts; and

3 (c) identify all DOCUMENTS and all other tangible things, that support your denial
4 or special or affirmative defense, and state the name, ADDRESS, and telephone number of the
5 PERSON who has each DOCUMENT.

6 **RESPONSE TO INTERROGATORY NO. 216.1:**

7 City objects to this interrogatory on the ground that it seeks to invade the attorney-client
8 privilege and the attorney work product doctrine and to violate *Penal Code* § 832.7 and *Evidence*
9 *Code* §1043. Notwithstanding, but subject to the foregoing, City responds as follows on
10 information and belief:

11 (a) Plaintiff did not complain about discrimination in the Burbank Police Department
12 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
13 any other manner of which the City is aware prior to describing such allegations as underlying his
14 FEHA and/or government tort claims for retaliation and in the complaint in this action. None of
15 the actions described in plaintiff's Complaint were in retaliation for plaintiff's non-existent
16 alleged complaints of racial discrimination in the Burbank Police Department.

17 Plaintiff was not demoted from Deputy Chief to Captain. At all relevant times, plaintiff
18 has held the position of Captain. There is no Deputy Chief position or classification in the
19 Burbank Police Department. The Chief of Police has been authorized to designate one of his
20 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
21 served in that assigned capacity from approximately August 2007 until approximately May 2009.
22 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
23 oversight of the Department's operations and to train and mentor new Captains. This assignment
24 was created under a previous administration.

25 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
26 did not believe that there was a pressing need for the role of the Captain serving in the capacity of
27 Deputy Chief, and he wanted to have more direct control and contact within the Department.
28 Therefore, he eliminated the assignment of having a Captain serve in the capacity of Deputy

1 Police Chief and re-assigned plaintiff as the Captain in command of the Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
3 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
4 most serious contributing factor was that Chief Stehr had received allegations of impropriety
5 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
6 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
7 oversaw internal affairs investigations conducted by the Department, which oversight was not
8 appropriate given the allegations against plaintiff.

9 (b) Tim Stehr, Mike Flad and members of the City's Management Services
10 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
11 following witnesses were aware of the reasons for the 2009 restructuring of the Police
12 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
13 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
14 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
15 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
16 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
17 *Code* §1043, particularly to the extent such investigations remains ongoing.

18 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
19 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
20 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
21 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
22 documents. Documents gathered or generated during the investigation into alleged improprieties
23 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
24 when and if they are discoverable.

25 FIRST AFFIRMATIVE DEFENSE

26 (Failure to State a Cause of Action)

27 This is a legal defense.

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1 oversaw internal affairs investigations conducted by the Department, which oversight was not
2 appropriate given the allegations against plaintiff.

3 (b) Tim Stehr, Mike Flad and members of the City's Management Services
4 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
5 following witnesses were aware of the reasons for the 2009 restructuring of the Police
6 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
7 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
8 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
9 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
10 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
11 *Code* §1043, particularly to the extent such investigations remains ongoing.

12 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
13 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
14 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
15 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
16 documents. Documents gathered or generated during the investigation into alleged improprieties
17 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
18 when and if they are discoverable.

19 THIRD AFFIRMATIVE DEFENSE

20 (Reasonable Response)

21 (a) Plaintiff failed to utilize the internal procedures for reporting complaints of illegal
22 discrimination and/or retaliation. The City has been unable to locate any complaints made prior
23 to the filing of the tort and DFEH claims required as a prerequisite to this action. The City
24 attempted to investigate these claims, but plaintiff, through this counsel, declined to be
25 interviewed. The investigations remain open. Discovery is continuing.

26 (b) Tim Stehr, Mike Flad and members of the City's Management Services
27 Department are aware of plaintiff's failure to complain of alleged race discrimination.

28 (c) The letters between the City and plaintiff/his counsel reflect plaintiff's refusal to

1 participate in an interview. These documents are in the possession of plaintiff and his counsel.

2 FOURTH AFFIRMATIVE DEFENSE

3 (Plaintiff's Negligence)

4 The damages allegedly suffered by plaintiff, if any, were directly or proximately caused
5 by the acts, omissions, carelessness, or negligence of plaintiff. As noted above, plaintiff did not
6 complain of discrimination and was not "demoted" to Captain. Information related to allegations
7 of improprieties by plaintiff that is part of an ongoing investigation protected by *Penal Code* §
8 832.7 and *Evidence Code* §1043 will be provided when and if it is relevant and discoverable.
9 Discovery is continuing.

10 FIFTH AFFIRMATIVE DEFENSE

11 (Negligence of Third Parties)

12 The damages allegedly suffered by plaintiff, if any, were directly or proximately caused
13 by the acts, omissions, carelessness, or negligence of plaintiff and/or third parties with whom he
14 affiliated. As noted above, plaintiff did not complain of discrimination and was not "demoted" to
15 Captain. Information related to allegations of improprieties by plaintiff or others that is part of an
16 ongoing investigation protected by *Penal Code* § 832.7 and *Evidence Code* §1043 will be
17 provided when and if it is relevant and discoverable. Discovery is continuing.

18 SIXTH AFFIRMATIVE DEFENSE

19 (Exclusive Remedy of Worker's Compensation)

20 (a) This is primarily a legal defense. To the extent that plaintiff's Complaint, or any
21 purported cause of action therein, alleges emotional or physical injury, any recovery is barred by
22 the exclusive remedy provisions of the California Workers' Compensation Act, *Labor Code* §§
23 132a and 3200, et seq. Plaintiff has filed workers' compensation claims, and is currently out on
24 medical leave. Discovery is continuing.

25 (b-c) City's Workers compensation files and persons listed therein.

26 SEVENTH AFFIRMATIVE DEFENSE

27 (Absence of Ratification)

28 (a) No alleged acts of discrimination or other civil wrongs allegedly committed

1 against plaintiff, if any occurred, were authorized, ratified, or approved by the City or any
2 supervising or managing agent. Plaintiff did not complain about discrimination in the Burbank
3 Police Department to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in
4 the complaint, or in any other manner of which the City is aware prior to describing such
5 allegations as underlying his FEHA and/or government tort claims for retaliation and in the
6 complaint for this action.

7 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
8 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
9 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
10 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
11 served in that assigned capacity from approximately August 2007 until approximately May 2009.
12 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
13 oversight of the Department's operations and to train and mentor new Captains. This assignment
14 was created under a previous administration.

15 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
16 did not believe that there was a pressing need for the assignment of a Captain serving in the
17 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
18 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
19 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the
20 Investigations Division.

21 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
22 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
23 most serious contributing factor was that Chief Stehr had received allegations of impropriety
24 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
25 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
26 oversaw internal affairs investigations conducted by the Department, which oversight was not
27 appropriate given the allegations against plaintiff.

28 (b) Tim Stehr, Mike Flad and members of the City's Management Services

1 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
2 following witnesses were aware of the reasons for the 2009 restructuring of the Police
3 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
4 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
5 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
6 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
7 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
8 *Code* §1043, particularly to the extent such investigations remains ongoing.

9 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
10 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
11 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
12 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
13 documents. Documents gathered or generated during the investigation into alleged improprieties
14 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
15 when and if they are discoverable.

16 EIGHTH AFFIRMATIVE DEFENSE

17 (Business Necessity)

18 (a) Plaintiff did not complain about discrimination in the Burbank Police Department
19 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
20 any other manner of which the City is aware prior to describing such allegations as underlying his
21 FEHA and/or government tort claims for retaliation and in the complaint for this action.

22 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
23 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
24 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
25 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
26 served in that assigned capacity from approximately August 2007 until approximately May 2009.
27 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
28 oversight of the Department's operations and to train and mentor new Captains. This assignment

1 was created under a previous administration.

2 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
3 did not believe that there was a pressing need for the assignment of a Captain serving in the
4 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
5 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
6 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the
7 Investigations Division.

8 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
9 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
10 most serious contributing factor was that Chief Stehr had received allegations of impropriety
11 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
12 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
13 oversaw internal affairs investigations conducted by the Department, which oversight was not
14 appropriate given the allegations against plaintiff.

15 (b) Tim Stehr, Mike Flad and members of the City's Management Services
16 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
17 following witnesses were aware of the reasons for the 2009 restructuring of the Police
18 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
19 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
20 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
21 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
22 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
23 *Code* §1043, particularly to the extent such investigations remains ongoing.

24 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
25 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
26 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
27 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
28 documents. Documents gathered or generated during the investigation into alleged improprieties

1 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
2 when and if they are discoverable.

3 NINTH AFFIRMATIVE DEFENSE

4 (Manager's Privilege)

5 (a) Plaintiff did not complain about discrimination in the Burbank Police Department
6 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
7 any other manner of which the City is aware prior to describing such allegations as underlying his
8 FEHA and/or government tort claims for retaliation and in the complaint for this action.

9 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
10 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
11 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
12 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
13 served in that assigned capacity from approximately August 2007 until approximately May 2009.
14 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
15 oversight of the Department's operations and to train and mentor new Captains. This assignment
16 was created under a previous administration.

17 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
18 did not believe that there was a pressing need for the assignment of a Captain serving in the
19 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
20 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
21 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the
22 Investigations Division.

23 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
24 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
25 most serious contributing factor was that Chief Stehr had received allegations of impropriety
26 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
27 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
28 oversaw internal affairs investigations conducted by the Department, which oversight was not

1 appropriate given the allegations against plaintiff.

2 (b) Tim Stehr, Mike Flad and members of the City's Management Services
3 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
4 following witnesses were aware of the reasons for the 2009 restructuring of the Police
5 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
6 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
7 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
8 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
9 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
10 *Code* §1043, particularly to the extent such investigations remains ongoing.

11 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
12 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
13 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
14 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
15 documents. Documents gathered or generated during the investigation into alleged improprieties
16 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
17 when and if they are discoverable.

18 TENTH AFFIRMATIVE DEFENSE

19 (Lack of Knowledge)

20 (a) Plaintiff did not complain about discrimination in the Burbank Police Department
21 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
22 any other manner of which the City is aware prior to describing such allegations as underlying his
23 FEHA and/or government tort claims for retaliation and in the complaint for this action.

24 (b) Tim Stehr, Mike Flad and members of the City's Management Services
25 Department are aware of plaintiff's failure to complain of alleged race discrimination.

26 (c) There are no documents relating to plaintiff's non-existent alleged complaints of
27 discrimination.

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1 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
2 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
3 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
4 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
5 served in that assigned capacity from approximately August 2007 until approximately May 2009.
6 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
7 oversight of the Department's operations and to train and mentor new Captains. This assignment
8 was created under a previous administration.

9 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
10 did not believe that there was a pressing need for the assignment of a Captain serving in the
11 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
12 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
13 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the
14 Investigations Division.

15 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
16 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
17 most serious contributing factor was that Chief Stehr had received allegations of impropriety
18 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
19 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
20 oversaw internal affairs investigations conducted by the Department, which oversight was not
21 appropriate given the allegations against plaintiff.

22 (b) Tim Stehr, Mike Flad and members of the City's Management Services
23 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
24 following witnesses were aware of the reasons for the 2009 restructuring of the Police
25 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
26 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
27 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
28 witnesses in internal affairs investigations may have knowledge relevant hereto, however the

1 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
2 *Code* § 1043, particularly to the extent such investigations remains ongoing.

3 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
4 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
5 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
6 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
7 documents. Documents gathered or generated during the investigation into alleged improprieties
8 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
9 when and if they are discoverable.

10 FIFTEENTH AFFIRMATIVE DEFENSE

11 (Estoppel)

12 (a) Plaintiff did not complain about discrimination in the Burbank Police Department
13 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
14 any other manner of which the City is aware prior to describing such allegations as underlying his
15 FEHA and/or government tort claims for retaliation and in the complaint for this action.

16 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
17 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
18 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
19 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
20 served in that assigned capacity from approximately August 2007 until approximately May 2009.
21 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
22 oversight of the Department's operations and to train and mentor new Captains. This assignment
23 was created under a previous administration.

24 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
25 did not believe that there was a pressing need for the assignment of a Captain serving in the
26 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
27 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
28 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the

1 Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
3 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
4 most serious contributing factor was that Chief Stehr had received allegations of impropriety
5 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
6 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
7 oversaw internal affairs investigations conducted by the Department, which oversight was not
8 appropriate given the allegations against plaintiff.

9 (b) Tim Stehr, Mike Flad and members of the City's Management Services
10 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
11 following witnesses were aware of the reasons for the 2009 restructuring of the Police
12 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
13 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
14 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
15 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
16 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
17 *Code* §1043, particularly to the extent such investigations remains ongoing.

18 (c) The following documents relate to the restructuring: May 14, 2009 letter from Juli
19 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
20 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
21 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
22 documents. Documents gathered or generated during the investigation into alleged improprieties
23 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
24 when and if they are discoverable.

25 SIXTEENTH AFFIRMATIVE DEFENSE

26 (Res Judicata and Collateral Estoppel)

27 (a) The City currently has no facts to support this defense. Discovery is continuing.

1 SEVENTEENTH AFFIRMATIVE DEFENSE

2 (After-Acquired Evidence)

3 (a)-(c) Any facts, witnesses, or documents pertaining to this defense are part of an
4 ongoing internal investigation which is protected under *Penal Code* § 832.7 and *Evidence Code* §
5 1043.

6 EIGHTEENTH AFFIRMATIVE DEFENSE

7 (Statute of Limitations)

8 (a) Some or all of plaintiff's claims are barred by the applicable statute of limitations,
9 California Code of Civil Procedure § 335.1 and California Government Code §§ 911.2, 12960,
10 12965. Some of the actions/events raised in pleadings in this action occurred more than one year
11 before plaintiff filed his DFEH Charge and government tort claim. Discovery is continuing.

12 NINETEENTH AFFIRMATIVE DEFENSE

13 (Privilege and Immunities)

14 This is a legal claim made in defense to certain kinds of causes of action.

15 TWENTIETH AFFIRMATIVE DEFENSE

16 (Attorneys' Fees)

17 This is a legal claim made in defense to certain kinds of causes of action.

18 TWENTY-FIRST AFFIRMATIVE DEFENSE

19 (Additional Defenses)

20 This is a legal reservation of rights for further defenses as they become apparent.
21 Discovery is continuing.

22 INTERROGATORY NO. 217.1:

23 Is your response to each request for admission served with these interrogatories an
24 unqualified admission? If not, for each response that is not an unqualified admission:

- 25 (a) state the number of the request;
26 (b) state all facts upon which you base your response;
27 (c) state names, ADDRESSES, and telephone numbers of all PERSONS who have
28 knowledge of those facts; and

(d) identify all DOCUMENTS and other tangible things that support your response and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

RESPONSE TO INTERROGATORY NO. 217.1:

In responding to this interrogatory, City incorporates its objections to the requests for admission to which it refers, including its objections that the requests for admission, and therefore this interrogatory, are vague, ambiguous, overly broad, irrelevant, assume facts, and seek information protected by *Penal Code* § 832.7, *Evidence Code* § 1043, the attorney-client privilege, and/or the attorney work product doctrine. Notwithstanding but subject to the foregoing, City responds as follows on information and belief:

(a) 2

(b) Plaintiff did not tell Mike Flad that a sexual harassment complaint with the Burbank Police Department had been handled inappropriately.

(c) Plaintiff; Mike Flad

(d) There are no known, non-privileged documents reflecting this alleged conversation.

(a) 3

(b) Plaintiff did not complain to Chief Stehr that minority officers were being singled out for termination. On one occasion, plaintiff advised Chief Stehr of a dispute between Lt. Hawver and Lt. Rodriguez as to whether a particular officer should be allowed to pass probation. Plaintiff advised Chief Stehr that the Lieutenants were not getting along. Chief Stehr told plaintiff to check with Captain Lynch to make sure the probationary officer was being treated fairly.

(c) Plaintiff; Tim Stehr

(d) There are no known, non-privileged documents reflecting this alleged conversation.

(a) 4

(b) Plaintiff never complained to Mike Flad about any racial discrimination within the

1 Burbank Police Department.

2 (c) Plaintiff, Mike Flad.

3 (d) There are no known, non-privileged documents reflecting this alleged
4 conversation.

5 (a) 6

6 (b) Plaintiff did not complain to or otherwise inform Mike Flad about any alleged
7 racial discrimination within the Burbank Police Department.

8 (c) Plaintiff, Mike Flad.

9 (d) There are no known, non-privileged documents reflecting this alleged
10 conversation.

11 (a) 7

12 (b) Plaintiff did not complain about discrimination in the Burbank Police Department
13 to either City Manager Mike Flad or Chief of Police Tim Stehr as alleged in the complaint, or in
14 any other manner of which the City is aware prior to describing such allegations as underlying his
15 FEHA and/or government tort claims for retaliation and in the complaint for this action.

16 Moreover, plaintiff was not demoted from Deputy Chief to Captain. At all relevant times,
17 plaintiff has held the position of Captain. There is no Deputy Chief position or classification in
18 the Burbank Police Department. The Chief of Police has been authorized to designate one of his
19 captains to serve an assignment in the capacity of a Deputy Police Chief. Plaintiff, as a captain,
20 served in that assigned capacity from approximately August 2007 until approximately May 2009.
21 The captain serving in the assigned capacity of Deputy Police Chief was tasked with day-to-day
22 oversight of the Department's operations and to train and mentor new Captains. This assignment
23 was created under a previous administration.

24 In May 2009, Chief of Police Tim Stehr decided to restructure the Police Department. He
25 did not believe that there was a pressing need for the assignment of a Captain serving in the
26 capacity as a Deputy Chief, and Chief Stehr wanted to have more direct control of and contact
27 within the Department. Therefore, he eliminated the assignment of having a Captain serve in the
28 capacity of a Deputy Police Chief and re-assigned plaintiff as the Captain in command of the

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- 32 -

1 Investigations Division.

2 Part of Chief Stehr's decision to restructure was based upon a loss of confidence in
3 plaintiff's ability to fulfill the tasks given to the Captain with the Deputy Chief assignment. The
4 most serious contributing factor was that Chief Stehr had received allegations of impropriety
5 concerning plaintiff, including that plaintiff had improperly interfered in and attempted to
6 influence an internal investigation. As the Captain with the Deputy Chief assignment, plaintiff
7 oversaw internal affairs investigations conducted by the Department, which oversight was not
8 appropriate given the allegations against plaintiff.

9 (c) Tim Stehr, Mike Flad and members of the City's Management Services
10 Department are aware of plaintiff's failure to complain of alleged race discrimination. The
11 following witnesses were aware of the reasons for the 2009 restructuring of the Police
12 Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members of the
13 Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J. Gibbons,
14 City Manager Mike Flad. Also, internal affairs investigators, as well as complaining and other
15 witnesses in internal affairs investigations may have knowledge relevant hereto, however the
16 identity of such persons is privileged and confidential under *Penal Code* § 832.7 and *Evidence*
17 *Code* §1043, particularly to the extent such investigations remains ongoing.

18 (d) The following documents relate to the restructuring: May 14, 2009 letter from Juli
19 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
20 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
21 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
22 documents. Documents gathered or generated during the investigation into alleged improprieties
23 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
24 when and if they are discoverable.

25 (a) 10

26 (b) Chief Stehr did not order plaintiff to destroy a memorandum recommending an
27 outside agency be brought in to investigate a burglary at the Burbank Police Department.

28 (c) Plaintiff, Tim Stehr

- 1 (d) There are no known, non-privileged documents reflecting this alleged order.
2 (a) 11
3 (b) Plaintiff did not complain or otherwise inform Mike Flad that he was purportedly
4 ordered to destroy a memorandum requesting an outside agency to investigate a burglary at the
5 Burbank Police Department.
6 (c) Plaintiff; Mike Flad
7 (d) There are no known, non-privileged documents reflecting this alleged
8 conversation.
9 (a) 12
10 (b) Plaintiff did not complain or otherwise inform Mike Flad that plaintiff believed
11 that sexual harassment was occurring in the Burbank Police Department.
12 (c) Plaintiff; Mike Flad
13 (d) There are no known, non-privileged documents reflecting this alleged
14 conversation.
15 (a) 13
16 (b) Plaintiff did not complain or otherwise inform Mike Flad that plaintiff believed
17 that there was corruption in the Burbank Police Department.
18 (c) Plaintiff; Mike Flad
19 (d) There are no known, non-privileged documents reflecting this alleged
20 conversation.
21 (a) 14
22 (b) Plaintiff did not complain or otherwise inform Mike Flad that he believed that
23 racial discrimination was occurring in the Burbank Police Department.
24 (c) Plaintiff; Mike Flad
25 (d) There are no known, non-privileged documents reflecting this alleged
26 conversation.
27 (a) 15
28 (b) Plaintiff did not complain or otherwise inform Mike Flad that plaintiff believed

1 that Chief Stehr was trying to cover up sexual harassment in the Burbank Police Department.

2 (c) Plaintiff; Mike Flad

3 (d) There are no known, non-privileged documents reflecting this alleged
4 conversation.

5 (a) 16

6 (b) Plaintiff did not complain or otherwise inform Mike Flad that plaintiff believed
7 that Chief Stehr was trying to cover up that minority officers were being unfairly targeted for
8 termination in the Burbank Police Department.

9 (c) Plaintiff; Mike Flad

10 (d) There are no known, non-privileged documents reflecting this alleged
11 conversation.

12 (a) 17

13 (b) Plaintiff did not complain or otherwise inform Mike Flad that plaintiff believed that
14 Chief Stehr was attempting to cover up that there were burglaries occurring by sworn officers in
15 the Burbank Police Department.

16 (c) Plaintiff; Mike Flad

17 (d) There are no known, non-privileged documents reflecting this alleged
18 conversation.

19 (a) 18

20 (b) Mike Flad did not tell Plaintiff that Stehr had said to him, "I have to save myself, I
21 can't go out this way" and Chief Stehr did not make such a statement to Mike Flad.

22 (c) Plaintiff; Mike Flad, Tim Stehr

23 (d) There are no known, non-privileged documents reflecting this alleged
24 conversation.

25 (a) 20

26 (b) Mike Flad did not tell plaintiff that plaintiff would be the next Chief of Police or
27 refer to plaintiff as the next Chief of Police.

28 (c) Plaintiff; Mike Flad

1 (d) There are no known, non-privileged documents reflecting this alleged
2 conversation.

3 (a) 21

4 (b) Mike Flad does not recall stating "Sometimes Bill, you have to take one for the
5 team." However, Mike Flad had a discussion with plaintiff, wherein, referring to his own
6 experience, he stated that as the number 2 administrator in a City department, it is sometimes
7 your job to implement decisions by your boss that will not be popular, and that the number 2
8 sometimes takes a disproportionate amount of blame or repercussions for his/her bosses'
9 decisions.

10 (c) Plaintiff; Mike Flad

11 (d) There are no known, non-privileged documents.

12 (a) 22

13 (b) Mike Flad does not recall telling plaintiff that "It's almost a leadership
14 development thing for the number 1 to throw the number 2 under the bus when things go wrong."
15 However, Mike Flad had a discussion with plaintiff in which he discussed the role of an assistant
16 department head and leadership issues. Mr. Flad discussed with plaintiff how it had been his job
17 when he was Assistant City manager in often overseeing the day to day operations to implement
18 the direction and decisions of his boss, even if he would have made a different decisions. This
19 sometimes requires the assistant to implement unpopular decisions and may have described the
20 role as sometimes requiring the assistant to take a disproportionate amount of "blame" for such
21 actions taken by the department. Mr. Flad also discussed leadership characteristics and the need
22 to demonstrate it even in the face of adversity. Mr. Flad advised that it was important for plaintiff
23 to demonstrate by example to the rank and file that problems facing the department would be
24 handled appropriately and that he could be counted on to facilitate the development and
25 implementation of solutions to move the department through them.

26 (c) Plaintiff; Mike Flad

27 (d) There are no known, non-privileged documents.

28 (a) 23

1 (b) Mike Flad did not ask Plaintiff if racial discrimination existed within the Burbank
2 Police Department, and plaintiff never stated or otherwise informed Mr. Flad that he believed
3 there was discrimination in the department.

4 (c) Plaintiff; Mike Flad

5 (d) There are no known, non-privileged documents reflecting this alleged
6 conversation.

7 (a) 24

8 (b) Mike Flad did not ask Plaintiff if racial discrimination existed within the Burbank
9 Police Department, and plaintiff did not inform Mr. Flad that he believed there was
10 discrimination in the department.

11 (c) Plaintiff; Mike Flad

12 (d) There are no known, non-privileged documents reflecting this alleged
13 conversation.

14 (a) 25

15 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
16 assignment to have a Captain serving in the capacity of a Deputy Chief was eliminated. On
17 informing plaintiff that the deputy chief assignment for captain was being eliminated, Chief Stehr
18 told plaintiff he would continue to receive the extra \$500 stipend paid to the Captain in that
19 assignment for two more months until the end of the fiscal year, after which that funding would
20 be removed from the Department budget.

21 (c) Plaintiff; Tim Stehr

22 (d) There are no known, non-privileged documents reflecting the alleged conversation
23 between plaintiff and Chief Stehr. The Management Services Division, Personnel Action forms
24 in plaintiff's personnel file, May -July 2009 reflect payment of the stipend for that period.

25 (a) 26

26 (b) Mike Flad did not tell Plaintiff that if Plaintiff took one for the team, that Mr. Flad
27 would remember that when it came time to appoint the next chief of police.

28 (c) Plaintiff; Mike Flad

1 (d) There are no known, non-privileged documents reflecting this alleged
2 conversation.

3 (a) 28

4 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
5 assignment to have a Captain serving in the capacity of a Deputy Chief was eliminated. Mike
6 Flad did not tell plaintiff that he agreed with Chief Stehr's decision to eliminate the assignment
7 for a captain to serve in the capacity of a deputy chief. Mike Flad told plaintiff that it was Chief
8 Stehr's decision to make.

9 (c) Plaintiff, Mike Flad.

10 (d) There are no known, non-privileged documents reflecting the alleged conversation
11 between plaintiff and Mike Flad. The following documents relate to the 2009 restructuring of the
12 Police Department: May 14, 2009 letter from Juli C. Scott to Elizabeth J. Gibbons and documents
13 referred to therein; Burbank Police Daily Bulletin dated May 4, 2009; City of Burbank,
14 Management Services Division, Personnel Action Forms as to plaintiff, 2007 through 2009, and
15 other miscellaneous Human Resources, personnel and payroll documents. Documents gathered
16 or generated during the investigation into alleged improprieties by plaintiff, which is ongoing and
17 as such remains confidential and privileged, will be provided when and if they are discoverable.

18 (a) 29

19 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
20 assignment to have a Captain serving in the capacity of a Deputy Chief was eliminated. Mike
21 Flad did not have a decisionmaking role in the elimination of the assignment for a captain to serve
22 in the capacity of a deputy chief that would require his agreement thereto.

23 (c) The following witnesses were aware of the reasons for the 2009 restructuring of
24 the Police Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members
25 of the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.
26 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as complaining
27 and other witnesses in internal affairs investigations may have knowledge relevant hereto,
28 however the identity of such persons is privileged and confidential under *Penal Code* § 832.7 and

1 *Evidence Code* §1043, particularly to the extent such investigations remains ongoing.

2 (d) The following documents relate to the restructuring: May 14, 2009 letter from Juli
3 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
4 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
5 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
6 documents. Documents gathered or generated during the investigation into alleged improprieties
7 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
8 when and if they are discoverable.

9 (a) 30

10 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
11 assignment to have a Captain serving in the capacity of a Deputy Chief was eliminated. Mike
12 Flad did not have a decisionmaking role in the elimination of the assignment for a captain to serve
13 in the capacity of a deputy chief that would require his agreement thereto.

14 (c) The following witnesses were aware of the reasons for the 2009 restructuring of
15 the Police Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members
16 of the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.
17 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as complaining
18 and other witnesses in internal affairs investigations may have knowledge relevant hereto,
19 however the identity of such persons is privileged and confidential under *Penal Code* § 832.7 and
20 *Evidence Code* §1043, particularly to the extent such investigations remains ongoing.

21 (d) The following documents relate to the restructuring: May 14, 2009 letter from Juli
22 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
23 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
24 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
25 documents. Documents gathered or generated during the investigation into alleged improprieties
26 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
27 when and if they are discoverable.

28 (a) 31

1 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
2 assignment to have a captain serving in the capacity of a deputy chief was eliminated. This
3 decision was made by Chief Stehr, not Mike Flad.

4 (c) The following witnesses were aware of the reasons for the 2009 restructuring of
5 the Police Department: Plaintiff, Chief of Police Tim Stehr and his Command Staff, all members
6 of the Department who received the Chief's Daily Bulletin on the restructuring, Elizabeth J.
7 Gibbons, City Manager Mike Flad. Also, internal affairs investigators, as well as complaining
8 and other witnesses in internal affairs investigations may have knowledge relevant hereto,
9 however the identity of such persons is privileged and confidential under *Penal Code* § 832.7 and
10 *Evidence Code* §1043, particularly to the extent such investigations remains ongoing.

11 (d) The following documents relate to the restructuring: May 14, 2009 letter from Juli
12 C. Scott to Elizabeth J. Gibbons and documents referred to therein; Burbank Police Daily Bulletin
13 dated May 4, 2009; City of Burbank, Management Services Division, Personnel Action Forms as
14 to plaintiff, 2007 through 2009, and other miscellaneous Human Resources, personnel and payroll
15 documents. Documents gathered or generated during the investigation into alleged improprieties
16 by plaintiff, which is ongoing and as such remains confidential and privileged, will be provided
17 when and if they are discoverable.

18 (a) 32

19 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
20 assignment to have a captain serving in the capacity of a deputy chief was eliminated. Mike Flad
21 did not tell plaintiff that plaintiff's "career was over" in Burbank after the deputy chief
22 assignment was eliminated.

23 (c) Plaintiff, Mike Flad.

24 (d) (d) There are no known, non-privileged documents reflecting this alleged
25 conversation.

26 (a) 33

27 (b) Plaintiff was not demoted. At all relevant times, plaintiff was a Captain. The
28 assignment to have a captain serving in the capacity of a deputy chief was eliminated. Mike Flad

1 did not tell plaintiff that he "could go over to Glendale and become chief of police" after the
2 deputy chief assignment in Burbank was eliminated.

3 (c) Plaintiff, Mike Flad.

4 (d) There are no known, non-privileged documents reflecting this alleged
5 conversation.

6 (a) 35

7 (b) Plaintiff does not appear to possess the leadership skills, abilities, judgment,
8 integrity, or personality to serve as the Chief of Police and does not have the confidence of City
9 Management or the members of the Burbank Police Department. Plaintiff served in the
10 assignment of captain serving in the capacity of deputy chief for a relatively short period of time,
11 during which the Chief of Police lost confidence in plaintiff's ability to fulfill this role, in large
12 part because of alleged improprieties brought to the Chief's attention which are the subject of a
13 pending internal affairs investigation. In addition, plaintiff has been a captain for less than four
14 years and has less experience than two of the other three individuals serving in the role of captain.

15 (c) Plaintiff, Tim Stehr, the members of the Burbank Police Department, Mike Flad.
16 Also, internal affairs investigators, as well as complaining and other witnesses in internal affairs
17 investigations may have knowledge relevant hereto, however the identity of such persons is
18 privileged and confidential under *Penal Code* § 832.7 and *Evidence Code* §1043..

19 (d) Documents gathered or generated during the investigation into alleged
20 improprieties by plaintiff, which is ongoing and as such remains confidential and privileged, will
21 be provided when and if they are discoverable.

22 Dated: January 15, 2010

Burke, Williams & Sorensen, LLP

23
24 By: 

Kristin A. Pelletier.
Attorneys for Defendant
City of Burbank

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**DEFENDANT CITY OF BURBANK'S RESPONSE TO
PLAINTIFF'S FORM INTERROGATORIES, SET ONE**

Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Ave., Suite 1590
Woodland Hill, CA 91367
Fax: (818) 712-4004

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

Executed on January 15, 2010, at Los Angeles, California.

Alice Cheung

1 VERIFICATION

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I have read the foregoing **DEFENDANT CITY OF BURBANK'S RESPONSE TO**
5 **PLAINTIFF'S FORM INTERROGATORIES, SET ONE.**

6 I am an employee of the City of Burbank, a party to this action, and am authorized to
7 make this verification for and on its behalf, and I make this verification for that reason. The
8 information contained in these responses is compiled from city sources and the responses are
9 based on information and belief.

10 I declare under penalty perjury under the laws of the State of CALIFORNIA that the
11 foregoing is true and correct.

12 Executed this 21 day of January, 2010 at Burbank California.

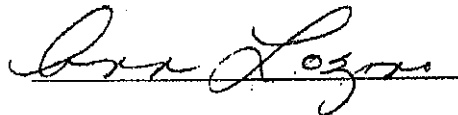
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EXHIBIT "G"

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City of Burbank

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 WILLIAM TAYLOR,

16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1
19 through 100, inclusive,,

20 Defendants.

Case No. BC 422252

DEFENDANT CITY OF BURBANK'S
RESPONSE TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION

21
22 PROPOUNDING PARTY: Plaintiff William Taylor
23 RESPONDING PARTY: Defendant City of Burbank
24 SET NO.: One

25 Pursuant to Code of Civil Procedure Section 2030.010-2030.060, defendant City of
26 Burbank ("City") hereby responds to plaintiff's first set of request for production as follows:

27 ///

28 ///

LA #4816-9067-3413 v1

- 1 -

CITY OF BURBANK'S RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR PRODUCTION

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1 City objects to each and every request to the extent that plaintiff seeks information which
2 is privileged, constitutes work-product, or is otherwise immune from discovery. The inadvertent
3 production of any information or document which is privileged, which was prepared in
4 anticipation of litigation or for trial, which otherwise constitutes work-product, or which is
5 otherwise immune from discovery shall not constitute a waiver of any privilege or any other
6 ground for objecting to discovery with respect to such information or such document or any other
7 document, or the subject matter thereof, or the information contained therein, or of City's right to
8 object to the use of any such information or the information contained therein.

9 **RESPONSES TO REQUESTS FOR PRODUCTION**

10 **REQUEST FOR PRODUCTION NO. 1:**

11 All DOCUMENTS which evidence, refer or relate to any communications between
12 Plaintiff and any member of the Burbank Police Department.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

14 City objects to this request on the ground that it is overbroad and burdensome in scope
15 and as to time, vague and ambiguous, and appears to seek mostly information which is irrelevant
16 and not reasonably calculated to lead to the discovery of admissible evidence. City further
17 objects to this request because, as phrased, it seeks information protected from disclosure under
18 Penal Code § 832.7, Evidence Code § 1043, the attorney-client privilege, and the attorney work
19 product doctrine. Notwithstanding, but subject the foregoing objections, City responds that it will
20 produce documents reflecting communications between plaintiff and the City when and if
21 plaintiff tailors its request to communications relevant to the issues in this lawsuit.

22 **REQUEST FOR PRODUCTION NO. 2:**

23 All DOCUMENTS which evidence, refer or relate to the demotion of plaintiff from the
24 rank of Deputy Chief to Captain.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

26 City objects to this request as misleading and as assuming facts which cannot be placed in
27 evidence as there was no demotion to Captain, and no "rank" of Deputy Chief. City further
28 objects to this request to the extent it seeks information protected from disclosure under Penal

LA #4816-9067-3413 v1

1 Code § 832.7 and Evidence Code § 1043. In addition, City objects to this request to the extent
2 this request seeks documents protected by the attorney-client privilege or attorney work-product
3 doctrine. Notwithstanding, but subject to the foregoing objections, City responds as follows:

4 City will produce the bulletin related to the decision to restructure the department and
5 eliminate the assignment of having a captain serve in the capacity of a deputy chief. Documents
6 gathered or generated during the investigation into alleged improprieties by plaintiff related to the
7 restructuring, which is ongoing and as such remains confidential and privileged, will be provided
8 when and if they are discoverable.

9 **REQUEST FOR PRODUCTION NO. 3:**

10 The entire contents of the personnel file of Capt. William Taylor.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

12 City will produce the Police Department personnel file and the Management Services
13 Division personnel files for plaintiff once plaintiff signs the City's Waiver of Personnel Records
14 Privilege.

15 **REQUEST FOR PRODUCTION NO. 4:**

16 Any DOCUMENTS which evidence, refer or relate to any complaints made by Plaintiff to
17 any employee of the City of Burbank.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

19 City objects to this request as overbroad both in scope and as to time, and vague and
20 ambiguous in general and as to the word "complaints." City further objects to this request on the
21 ground that it seeks information neither relevant to the subject matter of this action nor reasonably
22 calculated to lead to the discovery of admissible evidence. Notwithstanding, but subject to the
23 foregoing objections, City responds as follows:

24 City has not located responsive documents regarding any of the complaints of racial
25 discrimination that plaintiff says he made as alleged in his Complaint in this action.

26 **REQUEST FOR PRODUCTION NO. 5:**

27 Any DOCUMENTS which evidence, refer or relate to any of the affirmative defenses
28 stated in Defendant, City of Burbank's Answer to Plaintiff's operative Complaint for Damages

1 filed in this case.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

3 City objects to this request as overbroad, vague and ambiguous. City further objects to
4 this request as premature as discovery in this action is far from complete. Notwithstanding, but
5 subject to the foregoing objections, City responds as follows:

6 City will produce documents described in its corresponding response to form interrogatory
7 216.1 and plaintiff's personnel files with the Burbank Police Department and City's Management
8 Services Division once plaintiff signs the Waiver of Personnel Records Privilege.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 Any DOCUMENTS which evidence, refer or relate to any information that the City of
11 Burbank has that contradicts the claims made by plaintiff in his lawsuit for retaliation in violation
12 of FEHA and Labor Code section 1102.5.


13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

14 City objects to this request as overbroad, vague and ambiguous. City further objects to
15 this request as premature as discovery in this action is far from complete. Notwithstanding, but
16 subject to the foregoing objections, City responds as follows:

17 City will produce documents described in its corresponding response to form interrogatory
18 216.1 and plaintiff's personnel files with the Burbank Police Department and City's Management
19 Services Division once plaintiff signs the Waiver of Personnel Records Privilege.

20
21 Dated: January 15, 2010

Burke, Williams & Sorensen, LLP

22
23 By: 
24 Kristin A. Pelletier,
25 Attorneys for Defendant
26 City of Burbank
27
28

1 filed in this case.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

3 City objects to this request as overbroad, vague and ambiguous. City further objects to
4 this request as premature as discovery in this action is far from complete. Notwithstanding, but
5 subject to the foregoing objections, City responds as follows:

6 City will produce documents described in its corresponding response to form interrogatory
7 216.1 and plaintiff's personnel files with the Burbank Police Department and City's Management
8 Services Division once plaintiff signs the Waiver of Personnel Records Privilege.

9 **REQUEST FOR PRODUCTION NO. 6:**

10 Any DOCUMENTS which evidence, refer or relate to any information that the City of
11 Burbank has that contradicts the claims made by plaintiff in his lawsuit for retaliation in violation
12 of FEHA and Labor Code section 1102.5.

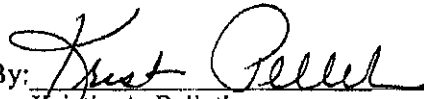
13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

14 City objects to this request as overbroad, vague and ambiguous. City further objects to
15 this request as premature as discovery in this action is far from complete. Notwithstanding, but
16 subject to the foregoing objections, City responds as follows:

17 City will produce documents described in its corresponding response to form interrogatory
18 216.1 and plaintiff's personnel files with the Burbank Police Department and City's Management
19 Services Division once plaintiff signs the Waiver of Personnel Records Privilege.

20
21
22 Dated: January 15, 2010

Burke, Williams & Sorensen, LLP

23
24 By: 
25 Kristin A. Pelletier
26 Attorneys for Defendant
27 City of Burbank
28

[illegible]

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in a sealed envelope, postage fully paid, addressed as follows:

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**BURKE, WILLIAMS &
SORENSEN, LLP**
ATTORNEYS AT LAW
LOS ANGELES

1 VERIFICATION

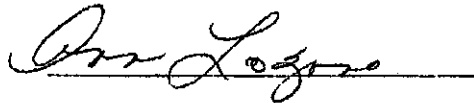
2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I have read the foregoing **DEFENDANT CITY OF BURBANK'S RESPONSE TO**
5 **PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION.**

6 I am an employee of the City of Burbank, a party to this action, and am authorized to
7 make this verification for and on its behalf, and I make this verification for that reason. The
8 information contained in these responses is compiled from city sources and the responses are
9 based on information and belief.

10 I declare under penalty perjury under the laws of the State of CALIFORNIA that the
11 foregoing is true and correct.

12 Executed this 21st day of January, 2010 at Burbank California.

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16 Ann Lozano
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EXHIBIT "H"

LAW OFFICES OF
GREGORY W. SMITH
6300 CANOGA AVENUE, SUITE 1590
WOODLAND HILLS, CALIFORNIA 91367
TELEPHONE (818) 712-4000 • (213) 385-3400
FACSIMILE (818) 712-4004

February 16, 2010

VIA FACSIMILE & U.S. MAIL

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Re: **William Taylor v. City of Burbank**
Los Angeles County Superior Court Case No. BC 422 252

Dear Ms. Pelletier:

This letter shall serve as a formal request to meet and confer concerning Defendant's responses to Form Interrogatories 201.3, et seq.; and Special Interrogatories 1 through 3.

As you know, the central theme in Plaintiff's retaliation case is the adverse employment decision that we contend was a demotion from Captain to Deputy Chief. Based upon your responses, Taylor was removed from his position on account of allegations of impropriety, in that Captain Taylor allegedly improperly interfered in an internal affairs investigation and attempted to influence the outcome.

The allegations that have been made against Captain Taylor are quite serious and have a direct impact on the issue of his adverse employment decision. However, you have objected to sharing any information regarding these allegations by stating an ongoing investigation is occurring and the material is confidential and privileged. Consequently, we are unable to dispute these allegations since you have not provided us with the names of any witnesses that support the allegations, any documents that support the allegations, and any specific facts that support the allegations.

Please accept this as an attempt to resolve these issues by entering into a protective order which will prohibit the use of witness information and documentation without further court order. Additionally, all of this information will be kept confidential and will not be disseminated to any third persons without

Re: William Taylor v. City of Burbank

Kristin A. Pelletier, Esq.

February 16, 2010

Page Two

court order.

I look forward to working out a mutually agreeable solution to this problem, however, if one cannot be found, I will be forced to seek court intervention. Please respond to this letter no later than February 19, 2010 as the motion to compel deadline is March 5, 2010.

Very truly yours,



Gregory W. Smith

cc: Christopher Brizzolara, Esq.
Carol A. Humiston, Sr. Asst. City Atty.

FAX

PAGE 1 of 3

LAW OFFICES OF GREGORY W. SMITH
6300 Canoga Avenue, Suite 1590
Woodland Hills, California 91367
Telephone No.: (818) 712-4000 ■ (213) 385-3400
Facsimile No.: (818) 712-4004

TO : Kristin A. Pelletier, Esq.
FROM : Gregory W. Smith, Esq.
RE : William Taylor v. City of Burbank
Los Angeles County Superior Court Case No. BC 422 252
DATE : February 16, 2010

MESSAGE:

ORIGINAL/COPY TO FOLLOW BY MAIL: YES [x] NO []

CONFIDENTIALITY NOTICE

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, distribution, or copying of this information is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone, and return the original documents to us at the above address via United State Postal Service.

SENT TO FAX NUMBER: (213) 236-2700. If you have any problems receiving this FAX, please call us at the above number.

TRANSMISSION VERIFICATION REPORT

TIME : 02/16/2010 15:33
NAME : LAW OFCS G. W. SMITH
FAX : 8187124004
TEL : 8187124000
SER.# : J9J445816

DATE, TIME	02/16 15:33
FAX NO./NAME	912132352700
DURATION	00:00:34
PAGE(S)	03
RESULT	OK
MODE	STANDARD
	ECM

FAX

PAGE 1 of 3

LAW OFFICES OF GREGORY W. SMITH
6300 Canoga Avenue, Suite 1590
Woodland Hills, California 91367
Telephone No.: (818) 712-4000 ■ (213) 385-3400
Facsimile No.: (818) 712-4004

TO : Kristin A. Pelletier, Esq.
FROM : Gregory W. Smith, Esq.
RE : William Taylor v. City of Burbank
Los Angeles County Superior Court Case No. BC 422 252
DATE : February 16, 2010

MESSAGE:

ORIGINAL/COPY TO FOLLOW BY MAIL: YES [x] NO []

CONFIDENTIALITY NOTICE

This transmission is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified

EXHIBIT "I"

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213.236.0600 • fax 213.236.2700
www.bvslaw.com

BURKE, WILLIAMS & SORENSON, LLP

February 24, 2010

VIA FACSIMILE AND U.S. MAIL

Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith
6300 Canoga Avenue, Suite 1590
Woodland Hills, CA 91367

Re: William Taylor v. City of Burbank
LASC Case No. BC 422252

Dear Mr. Smith:

Pursuant to your request, this letter responds to your letter dated February 16, 2010. I must disagree with several aspects of your description of the events in the second paragraph of your letter. As noted in the City's discovery responses, plaintiff was not demoted from Deputy Chief to Captain. He was always a Captain. For a while he held the assignment for a Captain to sit in the capacity of a deputy chief. In addition, as described in the City's responses, I must note that the allegation of impropriety was not the sole reason that this assignment was eliminated and plaintiff was moved to a different Captain's assignment. Regardless of the confidentiality of the ongoing investigation, plaintiff is free to conduct discovery into these other issues.

Nevertheless, to move on to the main issue of your letter, the City is, at present, unable to provide you with information from an ongoing internal affairs investigation. As I am sure you are aware, information from police investigations generally, and from internal investigations in particular is confidential. See e.g. *Penal Code* §§ 832.5, 832.7(a); *Evid. Code* § 1043; *Davis v. City of Sacramento* (1984) 24 Cal.App.4th 393, 401; *Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4th 385, 404-405. A party must typically make a *Pitche*s motion to obtain such records based upon good cause. *Evid. Code* § 1043. However, ongoing investigations and all of the information discovered therein are also subject to an additional layer of confidentiality, *County of Orange v. Sup. Ct.* (2000) 79 Cal.App.4th 759, 765, such that good cause to obtain investigation files will be lacking while the investigation is ongoing. Once the investigation is completed, we can either reach an agreement regarding the production of these files or plaintiff can bring a *Pitche*s motion asking the Court to weigh the propriety of the disclosure thereof. While we are not privy to the status of the

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02/24/2010 15:57 FAX 213 236 2700 BURKE WILLIAM

LAW OFCS G. W. SMITH
003

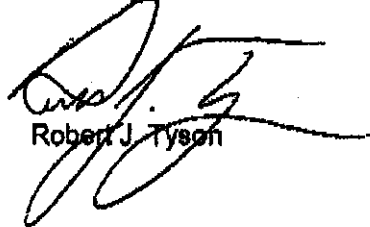
BURKE, WILLIAMS & SORENSON, LLP

Gregory W. Smith, Esq.
February 24, 2010
Page 2

investigation, we can contact the City to see if it can provide an update from its investigator regarding the projected completion date of the investigation.

In the meantime, I am willing to agree to an indefinite extension of the time for plaintiff to move to compel until two weeks after plaintiff is notified that the internal affairs investigation has concluded and been advised of the City's position with respect to disclosure of information in these files. Please contact me to confirm your agreement to such an extension.

Sincerely,



Robert J. Tyson

RECEIVED 02/24/2010 15:58 0197124004
02/24/2010 15:58 FAX 213 236 2700 BURKE WILLIAM

LAW OFFICES G. W. SMITH
2001



444 South Flower Street - Suite 2400
Los Angeles, California 90071-2853
voice 213.236.0800 - fax 213.236.2700
www.bwslaw.com

FACSIMILE MESSAGE

DATE: February 24, 2010

FILE NO.: 06147-0015

TO:
Gregory W. Smith, Esq.
Law Offices of Gregory W. Smith

FAX NO.:
(818) 712-4004

PHONE NO.:
(818) 712-4000

FROM: Robert J. Tyson, Esq. PHONE NO.: 213.236.0600

RE: Taylor v. City of Burbank

NUMBER OF PAGES WITH COVER PAGE:

3

MESSAGE:

DATE SENT: _____ TIME SENT: _____ INITIALS: _____

The information contained in this facsimile message is intended only for the CONFIDENTIAL use of the designated addressee named above. The information transmitted is subject to the attorney-client privilege and/or represents confidential attorney work product. If you are not the designated addressee named above or the authorized agent responsible for delivering it to the designated addressee, you received this document through inadvertent error and any further review, dissemination, distribution or copying of this communication by you or anyone else is strictly prohibited. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONING THE SENDER NAMED ABOVE AT 213.236.0800 AND RETURN THE ORIGINAL OF THIS COMMUNICATION TO US BY MAIL AT THE ABOVE ADDRESS. Thank you.

LA #4846-9035-6181 v1

Los Angeles - Inland Empire - Menlo Park - Orange County - Palm Desert - Ventura

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : March 5, 2010

DOCUMENT SERVED : NOTICE OF MOTION AND MOTION:

1. FOR DISCOVERY OF PEACE OFFICER PERSONNEL AND OTHER RECORDS REGARDING WILLIAM TAYLOR; AND
2. TO COMPEL FURTHER RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHRISTOPHER BRIZZOLARA

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Woodland Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on March 5, 2010.

Selma I. Francia

SERVICE LIST

**WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

Attention: Chief's Office
Burbank Police Department
200 N. Third Street
Burbank, California 91502